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COMMISSIONERS

TITLES 14-17

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 14

ESTATES OF DECEDENTS

CHAPTER.
1. Public Administrators, §§ 14-107, 14-113.
5. Unclaimed Property Law, §§ 14-501, 14-510, 14-517, 14-518, 14-522 — 14-525, 14-532 — 14-534.

CHAPTER 1

PUBLIC ADMINISTRATORS

SECTION.
14-107. Officials to notify administrator of decedent's property.
14-113. Unclaimed moneys — Payment into public school permanent endowment fund — Escheat.

14-107. Officials to notify administrator of decedent's property. — All public officials shall, within forty-eight (48) hours of knowledge of a death, inform the public administrator of and make available to him all property known to them, belonging to a decedent who resided at the time of death in the county, which is liable to loss, injury or waste, or which, by reason thereof, ought to be in the possession of the public administrator. The public administrator shall be responsible for determining if any heirs or a will exists in all cases where there are no known personal representatives.

History.
R.S., R.C., & C.L., § 5686; C.S., § 7781; I.C.A., § 15-1607; am. and redesig. 1971, ch. 111, § 6, p. 233; am. 1996, ch. 69, § 4, p. 213; am. 2012, ch. 208, § 4, p. 562.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 208, substituted "officials" for "officers" in the section heading, substituted "shall" for "must" near the beginning of the first sentence, and deleted "and shall make burial arrangements" following "or a will exists" in the second sentence.

14-113. Unclaimed moneys — Payment into public school permanent endowment fund — Escheat. — After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the administrator shall submit a report of abandoned property and proceed to dispose of the property in a manner set forth in the uniform unclaimed property act in chapter 5, title 14, Idaho Code, provided that such property shall be identified by the public administrator as section 14-113 abandoned property. The state treasurer shall distribute the moneys to the public school permanent endowment fund created pursuant to section 4, article IX, of the constitution of the state of Idaho upon expiration of the period for redemption of the property pursuant to section 14-523, Idaho Code.

History.
R.S., R.C., & C.L., § 5692; C.S., § 7787; am. 1921, ch. 180, § 1, p. 375; am. 1925, ch. 218, § 4, p. 397; I.C.A., § 15-613; am. and

redesig. 1971, ch. 111, §§ 6, 19, p. 233; am. 1984, ch. 36, § 3, p. 60; am. 1996, ch. 69, § 5, p. 213; am. 2007, ch. 97, § 1, p. 280; am. 2010, ch. 15, § 1, p. 18; am. 2012, ch. 215, § 1, p. 584.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 15, substituted "shall submit a report of abandoned property required under section 14-517, Idaho Code, and proceed to dispose of the property in a manner set forth in the uniform unclaimed property act in chapter 5, title 14, Idaho Code, provided that in the event no person appears to claim such property within one thousand eight hundred twenty-seven (1,827) days, approximately five (5) years from the date the property should have been reported, the money or property so deposited" for "must pay into the state tax commission any and all moneys and effects which".

The 2012 amendment, by ch. 215, deleted "required under section 14-517, Idaho Code," following "a report of abandoned property" near the beginning of the first sentence, substituted "such property shall be identified by the public administrator as section 14-113 abandoned property. The state treasure shall distribute the money" for "in the event no person appears to claim such property within one thousand eight hundred twenty-seven (1,827) days, approximately five (5) years from the date the property should have been reported, the money or property so deposited shall accrue and be transferred", and added "upon expiration of the period for redemption of the property pursuant to section 14-523, Idaho Code" at the end of the section.

CHAPTER 5

UNCLAIMED PROPERTY LAW

SECTION.

14-501. Definitions and use of terms.
14-510. Stock and other intangible interests in business associations.
14-517. Report of abandoned property.
14-518. Notice and publication of lists of abandoned property.
14-522. Public sale of abandoned property.
14-523. Disposition of money received.
14-524. Filing of claim with administrator.
14-525. Claim of another state to recover property — Procedure.
14-532. Enforcement — Actions to enforce unclaimed property law — Administrative rules.
14-533. Interest and penalties.
14-534. State historical society use of property.

14-501. Definitions and use of terms. — As used in this chapter:

(1) "Administrator" means the state treasurer or his or her duly authorized agents or employees.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state.

(4) "Banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, limited liability company, joint stock company, investment company, business trust, partnership, or association for business purposes of two (2) or more individuals, whether or not for profit, including, but not limited to, a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, coop-

erative bank, building and loan association, investment company, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life, including endowments and annuities, malpractice, marine, mortgage, surety, and wage protection insurance.

(10) "Intangible property" includes:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(c) Stocks and other intangible ownership interests in business associations;

(d) Amounts paid for tickets, passes or vouchers to gain entrance to a scheduled event where the scheduled event was canceled and not rescheduled, and the owner of the tickets, passes or vouchers is entitled to a refund in cash, services or merchandise;

(e) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(f) Amounts due and payable under the terms of insurance policies;

(g) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits; and

(h) Any interest created by a judgment entered in any court of competent jurisdiction in favor of persons who are members of a class of persons defined by the court entering the judgment.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this act or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of

communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History.
I.C., § 14-501, as added by 1983, ch. 209, § 2, p. 563; am. 1984, ch. 36, § 1, p. 60; am. 1997, ch. 399, § 1, p. 1262; am. 2010, ch. 202, § 1, p. 436.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 202, substituted "state treasurer or his or her duly authorized agents" for "state tax commission or its duly authorized agents" in subsection (1).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes implementing the Uniform Unclaimed Property Act or its predecessor — Modern status. 29 A.L.R.6th 507.

14-510. Stock and other intangible interests in business associations. — (1) Except as provided in subsection (4) of this section, any stock, shareholding or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is considered abandoned if:

(a) The interest in the association is owned by a person who within five (5) years has failed to:

(i) Claim a dividend, distribution or other sum payable as a result of the interest; or

(ii) Communicate with the association regarding the interest or a dividend, distribution or other sum payable as the result of the interest, as evidenced by memorandum or other record on file with the association prepared by an employee of the association; and

(b) The association does not know the location of the owner at the end of the five (5) year period. The return of official shareholder notifications or communications by the postal service as undeliverable is evidence that the association does not know the location of the owner.

(2) This chapter applies to:

(a) The underlying stock, shareholdings or other intangible ownership interests of an owner;

(b) Any stock, shareholdings or other intangible ownership interest of an owner when the business association is in possession of the certificate or other evidence of ownership; and

(c) The stock, shareholdings or other intangible ownership interests of dividend and nondividend paying business association, whether or not the interest is represented by a certificate.

(3) At the time an interest is considered abandoned under this section, any dividend, distribution or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is considered abandoned.

(4)(a) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic

reinvestment of dividends, distributions or other sums payable as a result of the interest unless:

(i) The records available to the administrator of the plan show that the owner has not within five (5) years communicated in any manner described in subsection (1) of this section[.]; or

(ii) Five (5) years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those five (5) years communicated in any manner described in this chapter.

(b) The five (5) year period from the return of official notifications or communications begins at the earlier of the return of the second of those notifications or communications or the time the holder discontinues mailings to the shareholder.

History.
I.C., § 14-510, as added by 1983, ch. 209, § 2, p. 563; am. 1992, ch. 21, § 2, p. 67; am. 2011, ch. 137, § 1, p. 395.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 137, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
The compiler has placed brackets around surplus punctuation following the 2011 amendment of paragraph (4)(a)(i).

14-517. Report of abandoned property. — (1) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter, shall report to the administrator concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars ($50.00) held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the administrator prescribes by rule as necessary for the administration of the provisions of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed no later than November 1 of each year as of June 30 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

(5) All holders of property presumed abandoned under this section that know the whereabouts of the owner of such property shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. Not more than one hundred twenty (120) days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

(6) The written notice required under this section shall include the name and address of the apparent owner, the nature and amount of the property presumed abandoned in the holder's possession, the name and address of the holder of the property presumed abandoned, a request that the apparent owner identify whether the property presumed abandoned is or is not unclaimed property under this chapter, and the reasons therefor, and any other criteria the administrator deems appropriate.

(7) If the apparent owner completes and returns the written notice described in subsection (6) of this section to the holder, and the apparent owner indicates a claim to the property presumed abandoned or indicates that the property identified in the written notice is not abandoned property, the holder need not pay or deliver the property to the administrator, and the property shall not be considered abandoned.

(8) In the event a holder receives a written notice as described in subsection (7) of this section demonstrating that certain property is not abandoned, a new presumption of abandonment may arise for such property due to the passage of time. The date the holder receives the written notice shall be deemed the date such property became payable or distributable for the purposes of calculating whether a presumption of abandonment has arisen.

(9) A report filed pursuant to this section shall be presumed accurate if the holder has maintained adequate records sufficient to establish by a preponderance of evidence that each item on the report is accurate and correct.

(10) Any person or holder in possession of ten (10) or more items of unclaimed property must submit an accurate electronic report in the format prescribed by the administrator.

History.
I.C., § 14-517, as added by 1983, ch. 209, § 2, p. 563; am. 1991, ch. 62, § 1, p. 153; am. 1997, ch. 399, § 8, p. 1262; am. 2002, ch. 152, § 5, p. 443; am. 2004, ch. 29, § 1, p. 49; am. 2010, ch. 15, § 2, p. 18.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 15, added subsection (10).

14-518. Notice and publication of lists of abandoned property. — (1) The administrator shall establish, maintain and update at least quarterly a current list of all reported owners of abandoned property on a website that is connected to or that may be accessed from the website maintained by the state treasurer. At least one (1) week before each quarterly website posting of such list, the administrator shall publish a notice in the official newspaper of each Idaho county stating when and where the quarterly website listing of Idaho abandoned property will be accessible to citizens. Provided however, the names and addresses of owners located in a state which will receive the accounts because of reciprocal agreements as permitted by section 14-535, Idaho Code, need not be listed.

(2) The list maintained by the administrator must contain:

(a) The names, in alphabetical order, of persons listed in any report of abandoned property filed with the administrator and entitled to notice;

(b) A statement that information concerning the property may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator;

(c) A statement that the property is in the custody of the administrator and all claims must be directed to the administrator; and

(d) A statement that the property shall escheat to the state of Idaho and become the property of the state of Idaho if not claimed within ten (10) years after it is received by the administrator.

(3) The administrator is not required to list any items of less than one hundred dollars ($100) unless the administrator considers the inclusion of such property in the list to be in the public interest.

(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 14-504, Idaho Code.

History.
I.C., § 14-518, as added by 1983, ch. 209, § 2, p. 563; am. 1987, ch. 10, § 1, p. 14; am. 1988, ch. 282, § 1, p. 915; am. 1991, ch. 62, § 2, p. 153; am. 1997, ch. 399, § 9, p. 1262; am. 2002, ch. 34, § 1, p. 65; am. 2004, ch. 29, § 2, p. 49; am. 2005, ch. 36, § 1, p. 156; am. 2010, ch. 202, § 2, p. 436.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 202, substituted "state treasurer" for "state tax commission" in the first sentence in subsection (1).

14-522. Public sale of abandoned property. — (1) The administrator may, within three (3) years after the receipt of abandoned property, sell

it to the highest bidder at public sale in whatever city affords, in the judgment of the administrator, the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property for sale if in the judgment of the administrator, the bid is insufficient. If in the judgment of the administrator, the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three (3) weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.

(3) A person making a claim under this chapter is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from the sale, less any amounts deducted pursuant to section 14-523(4), Idaho Code, but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.

(4) The purchaser of property at any sale conducted by the administrator pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History.

I.C., § 14-522, as added by 1983, ch. 209, § 2, p. 563; am. 2007, ch. 97, § 2, p. 280; am. 2010, ch. 15, § 3, p. 18; am. 2012, ch. 215, § 2, p. 584.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 15, in the first sentence in subsection (1), inserted "may" after "administrator" and deleted "shall" after "abandoned property".

The 2012 amendment, by ch. 215, updated the statutory reference in subsection (3) in light of the 2012 amendment of § 14-523.

14-523. Disposition of money received. — (1) All money received under this chapter, including the proceeds from the sale of property under section 14-522, Idaho Code, shall be deposited in the unclaimed property account.

(2) Moneys in the unclaimed property account are subject to redemption by the owner as follows:

(a) All moneys designated by law for escheatment to the public school permanent endowment fund created pursuant to section 4, article IX, of the constitution of the state of Idaho may be redeemed by the owner, upon satisfaction of the requirements for redemption established in rule by the administrator, if claimed within a period of ten (10) years from the date

the property is subject to the custody of the state under this chapter. Upon the conclusion of such redemption period, unredeemed moneys shall escheat to the public school permanent endowment fund.

(b) Moneys submitted from unnamed owners may be designated as unredeemable after a period of ten (10) years upon satisfaction of the requirements for designation as unredeemable established in rule by the administrator.

(c) All other moneys in the unclaimed property account may be redeemed by the owner upon satisfaction of the requirements for redemption established in rule by the administrator.

(3) Moneys in the unclaimed property account shall be distributed as follows:

(a) All moneys designated by law for distribution to the public school permanent endowment fund shall be transferred from the unclaimed property account to the public school permanent endowment fund upon the expiration of the period provided in this section for the owner to redeem such moneys.

(b) The state treasurer shall transfer all moneys designated as unredeemable to the general fund at the end of each fiscal year.

(4) All money in the unclaimed property account is hereby continuously appropriated to the state treasurer, without regard to fiscal years, for expenditure in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

(a) For payment of claims allowed by the state treasurer under the provisions of this chapter.

(b) For refund, to the person making such deposit of amounts, including overpayments, deposited in error in such account.

(c) For payment of the cost of appraisals incurred by the state treasurer covering property held in the name of the account.

(d) For payment of the cost incurred by the state treasurer for the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the state treasurer, or which arose from complying with this chapter with respect to such property or funds.

(e) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner.

(f) For payment of costs of official advertising in connection with the sale of property held in the name of the account.

(g) For transfer to the general fund as provided in subsection (3) of this section.

(h) For transfer to the public school permanent endowment fund as provided in subsection (3) of this section.

(5) At the end of each fiscal year, or more often, if he or she deems it advisable, the state treasurer shall transfer all money in the unclaimed property account in excess of two hundred fifty thousand dollars ($250,000) to the general fund. Within sixty (60) days of making this transfer or of

receiving a report of unclaimed property, whichever is earlier, the administrator shall record the name and last known address, if available, of each person identified as the apparent owner of the unclaimed property in the unclaimed property account or transferred to the general fund. The record shall be available for public review on the state treasurer's website.

History.

I.C., § 14-523, as added by 1983, ch. 209, § 2, p. 563; am. 1994, ch. 124, § 2, p. 282; am. 1997, ch. 399, § 11, p. 1262; am. 2004, ch. 29, § 3, p. 49; am. 2007, ch. 97, § 3, p. 280; am. 2010, ch. 202, § 3, p. 436; am. 2011, ch. 275, § 1, p. 747; am. 2012, ch. 215, § 3, p. 584.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 202, throughout subsections (2) through (4), substituted "state treasurer" for "state tax commission".

The 2011 amendment, by ch. 275, deleted former paragraph (3)(h), which read: "For transfer to the inheritance tax account of the amount of any inheritance taxes determined to be due and payable to the state by any claimant with respect to any property claimed by him under the provisions of this chapter."

The 2012 amendment, by ch. 215, rewrote the section, adding present subsection (2) and deleting former subsection (5).

14-524. Filing of claim with administrator. — (1) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator, may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) The administrator shall consider each claim within ninety (90) days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The ninety (90) day time period may be extended by the claimant and the administrator upon their written agreement. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed:

(a) Except upon election of donation as authorized in subsection (3)(c) of this section, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds, if it has been sold by the administrator, together with any additional amount required by section 14-521, Idaho Code.

(b) If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of five percent (5%) a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten (10) years after delivery or the date on which payment is made to the owner.

(c) As directed by the claimant, the administrator shall pay over or deliver any property, proceeds, interest and other sums payable pursuant to this chapter to one (1) or more of the following: the general fund of the

state of Idaho defined in section 67-1205, Idaho Code; the public school permanent endowment fund created pursuant to section 4, article IX, of the constitution of the state of Idaho; the veterans cemetery maintenance fund created pursuant to section 65-107, Idaho Code; or the park and recreation capital improvement account created pursuant to section 57-1801, Idaho Code.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to the provisions of subsection (3)(b) of this section, shall add interest as provided in subsection (3)(b). The added interest must be repaid to the holder by the administrator in the same manner as the principal.

(5) A person claiming an abandoned utility deposit under section 14-508(1), Idaho Code, who is entitled thereto under this section, which was not deposited with the administrator under section 14-508(2), Idaho Code, may file a claim on a form prescribed by the administrator and verified by the claimant. The administrator will forward the claim to the utility company, who shall remit such payment to the claimant upon receipt of the claim.

History.
I.C., § 14-524, as added by 1983, ch. 209, § 2, p. 563; am. 1997, ch. 399, § 12, p. 1262; am. 2003, ch. 11, § 1, p. 28; am. 2012, ch. 308, § 1, p. 849.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 308, in subsection (3), designated the existing provisions as paragraphs (a) and (b) and added paragraph (c); and updated the internal references in subsection (4).

14-525. Claim of another state to recover property — Procedure. — (1) At any time after property has been paid or delivered to the administrator under this chapter, another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and, under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under section 14-503(3)(b), Idaho Code, and under the laws of the state of domicile of the

holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this state under section 14-504, Idaho Code, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety (90) days after it is presented. The administrator shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The administrator shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

History.

I.C., § 14-525, as added by 1983, ch. 209, § 2, p. 563; am. 2011, ch. 275, § 2, p. 747.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 275, substituted "section 14-503(3)(b)" for "section 14-503(b)" in paragraph (1)(d).

14-532. Enforcement — Actions to enforce unclaimed property law — Administrative rules. — (1) The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, and 63-3042 through 63-3065A, Idaho Code, but excluding subsection (6) of section 63-3045, Idaho Code, shall apply and be available to the state treasurer for enforcement of the provisions of this chapter and collection of any property required to be transferred shall be treated in the same manner as taxes due the state of Idaho, and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement of this chapter, be described as unclaimed property liens and proceedings.

(2) The powers and duties held by the state tax commission on June 30, 2010, pursuant to the provisions of subsection (1) of this section, shall for the purposes of this chapter and for the administration of the unclaimed property, be deemed to be powers and duties of the state treasurer on and after July 1, 2010.

(3) The administrative rules of the state tax commission in effect on June 30, 2010, for administering the provisions of this chapter shall remain in force and effect as if promulgated by the state treasurer until new rules are promulgated by the state treasurer and become effective pursuant to the provisions of section 67-5224, Idaho Code, at which time rules promulgated by the state tax commission shall be deemed repealed. The state treasurer shall have the power to promulgate administrative rules to implement the provisions of this chapter in compliance with chapter 52, title 67, Idaho Code.

History.
I.C., § 14-532, as added by 1983, ch. 209, § 2, p. 563; am. 2008, ch. 11, § 1, p. 16; am. 2010, ch. 202, § 4, p. 436.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 202, in the section heading, added "administrative rules"; added the subsection (1) designation, and therein substituted "state treasurer" for "state tax commission"; and added subsections (2) and (3).

14-533. Interest and penalties. — (1) Upon the administrator's showing by a preponderance of evidence that a holder has failed to pay or deliver property within the time prescribed in this chapter, the holder shall pay to the administrator interest at the annual rate of twelve percent (12%) on the property or value thereof from the date the property should have been paid or delivered until actual delivery is made.

(2) Upon the administrator's showing by a preponderance of evidence that a holder has negligently failed to pay or deliver property within the time prescribed in this chapter, the holder shall pay to the administrator a penalty at the annual rate of five percent (5%) on the property or value thereof from the date the property should have been paid or delivered until actual delivery is made unless the holder demonstrates to the satisfaction of the administrator that the failure was due to reasonable cause and not neglect.

(3) A holder who willfully refuses after written demand by the administrator to pay or deliver property as required under this chapter shall be guilty of a misdemeanor and upon conviction may be punished by a fine of not less than three hundred dollars ($300) nor more than three thousand dollars ($3,000).

(4) Upon a showing that a holder of property presumed to be abandoned or unclaimed has acted in good faith and without negligence to comply with the accurate reporting requirements of section 14-517, Idaho Code, the administrator may waive, in whole or in part, interest pursuant to subsection (1) of this section and penalties pursuant to subsection (2) of this section.

History.
I.C., § 14-533, as added by 1992, ch. 21, § 6, p. 67; am. 1997, ch. 399, § 16, p. 1262; am. 2010, ch. 15, § 4, p. 18.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 15, inserted "the holder" after "in this chapter" in subsections (1) and (2); and added subsection (4).

14-534. State historical society use of property. — The director of the state historical society may examine any tangible personal property delivered to the state treasurer under this chapter for purposes of determining whether such property is of sufficient historical value that it should be preserved. If he so determines, the state treasurer may deliver such property to the state historical society for preservation and display, until such time as the owner shall make claim for return of such property.

History.
I.C., § 14-534, as added by 1983, ch. 209, § 2, p. 563; am. 2010, ch. 202, § 5, p. 436.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 202, twice substituted "state treasurer" for "state tax commission."

TITLE 15

UNIFORM PROBATE CODE

CHAPTER.

1. General Provisions, Definitions and Probate Jurisdiction of Court, § 15-1-501.
2. Intestate Succession — Wills, § 15-2-801.
3. Probate of Wills and Administration, §§ 15-3-715, 15-3-914.
5. Protection of Persons Under Disability and Their Property, §§ 15-5-207, 15-5-213, 15-5-308, 15-5-311, 15-5-316, 15-5-401, 15-5-407, 15-5-424, 15-5-602.
9. Foreign Guardianships and Conservatorships. [Repealed.]
10. Transfers of Guardianships and Conservatorships to a Foreign Jurisdiction. [Repealed.]
11. Temporary Recognition of Foreign Guardianships and Conservatorships. [Repealed.]
12. Uniform Power of Attorney Act, § 15-12-108.
13. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, §§ 15-13-101 — 15-13-106, 15-13-201 — 15-13-209, 15-13-301, 15-13-302, 15-13-401 — 15-13-403, 15-13-501 — 15-13-504.

CHAPTER 1

GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

Part 5. Miscellaneous Provisions

SECTION.

15-1-501. Construction of certain formula clauses.

Part 1. Short Title, Construction, General Provisions

15-1-106. Effect of fraud and evasion.

JUDICIAL DECISIONS

Limitations.

This section allows for the commencement of an action, within two years, against the perpetrator of a fraud, but it does not toll the three-year statute of limitations in § 15-3-108. Erickson v. McKee (In re Estate of McKee), — Idaho —, 283 P.3d 749 (2012).

Part 5. Miscellaneous Provisions

15-1-501. Construction of certain formula clauses. — (1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction" or "unlimited marital deduction," or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the

amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as they apply with respect to estates of decedents dying in 2010, without regard to whether the decedent's personal representative or other fiduciary elects not to have the estate tax apply with respect to that estate. This provision shall not apply with respect to a will, trust or other instrument that manifests an intent that a contrary rule shall apply.

(2) The personal representative, trustee, other fiduciary or any affected beneficiary under the will, trust or other instrument may bring a proceeding to determine whether the decedent intended that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section. A proceeding under this section shall be commenced before January 1, 2012. In a proceeding under this section, the court may consider extrinsic evidence that contradicts the plain meaning of the will, trust or other instrument. The court shall have the power to modify a provision of the will, trust or other instrument that refers to the federal estate tax or generation-skipping tax laws as described in subsection (1) of this section to:

(a) Conform the terms to the decedent's intention; or

(b) Achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention.

The court may provide that an interpretation or modification pursuant to this section shall be effective as of the decedent's date of death. A person who commences a proceeding under this section has the burden of proof, by clear and convincing evidence, in establishing the decedent's intent that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section.

(3) For purposes of this section only, interested persons may enter into a binding agreement to determine whether the decedent intended that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section and to conform the terms to the decedent's intention, without court approval as provided in subsection (2) of this section. As used in the subsection, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. In the case of a trust, the agreement may be by nonjudicial settlement agreement pursuant to chapter 8, title 15, Idaho Code. Any interested person may petition the court to approve the agreement or to determine whether all interested persons are parties to the agreement, either in person or by adequate representation where permitted by law, and whether the agreement contains terms the court could have properly approved.

History.

I.C., § 15-1-501, as added by 2010, ch. 68, § 1, p. 116; am. 2011, ch. 305, § 1, p. 872.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 305, rewrote the section to the extent that a detailed comparison is impracticable

Compiler's Notes.

This section does not have a counterpart in the uniform probate code adopted by the national conference of commissioners on uniform state laws.

Section 2 of S.L. 2010, ch. 68 declared an emergency retroactively to January 1, 2010 and approved March 18, 2010.

Effective Dates.

Section 2 of S.L. 2011, ch 305 declared an emergency retroactively to January 1, 2010 and approved April 11, 2011.

CHAPTER 2

INTESTATE SUCCESSION — WILLS

PART 8. GENERAL PROVISIONS

SECTION.

15-2-801. Renunciation.

PART 5. WILLS

15-2-501. Who may make a will.

JUDICIAL DECISIONS

ANALYSIS

Testamentary capacity.
Undue influence.

Testamentary Capacity.

Testimony from an attorney was properly admitted that in his opinion a testator with dementia had testamentary capacity throughout his meetings with her, including on the day the will was executed. He described her as "alert," "perky," not distracted, and said she correctly answered questions about her family members, the value of her estate, and the current date. Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380 (2012).

Undue Influence.

Evidence was sufficient to rebut the presumption of undue influence and find that a testator with dementia was not unduly influenced by her son, who was also her guardian, in part because she had independent and disinterested advice from an attorney, whom she met with three times, with almost no participation by the son. Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380 (2012).

PART 8. GENERAL PROVISIONS

15-2-801. Renunciation. —

(1)(a) A person or the representative of an incapacitated or unascertained person who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary of an insurance contract, person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, or otherwise the recipient of any benefit under a testamentary or nontestamentary instrument, may renounce in whole or in part, powers, future interests, specific parts,

fractional shares or assets thereof by filing a written instrument within the time and at the place hereinafter provided.

(b) The instrument shall:

(i) Describe the property or interest renounced;

(ii) Be signed by the person renouncing; and

(iii) Declare the renunciation and the extent thereof.

(c) The appropriate court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce or to deviate from any power of administration, management or allocation of benefit upon finding that exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust or estate, in the manner pursuant to part 4, chapter 1, title 15, Idaho Code.

(2) Except as provided in subsection (9) of [the] this section, the writing specified in subsection (1) of this section must be filed within nine (9) months after the transfer or the death of the decedent, or donee of the power, whichever is the later, or, if the taker of the property is not then finally ascertained, not later than nine (9) months after the event that determines that the taker of the property or interest is finally ascertained or his interest indefeasibly vested. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the writing may also be recorded in the office of the recorder in the county in which said real estate lies. A copy of the writing also shall be delivered in person or mailed by registered or certified mail to the personal representative of the decedent, the trustee of any trust in which the interest renounced exists, and no such personal representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the renunciation.

(3) Unless the decedent or donee of the power has otherwise indicated, the property or interest renounced passes as if the person renouncing had predeceased the decedent, or if the person renouncing is designated to take under a power of appointment as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) The right to renounce property or an interest therein is barred by:

(a) Assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor;

(b) Written waiver of the right to renounce; or

(c) Sale or other disposition of property pursuant to judicial process, made before the renunciation is effective.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(7) This section does not abridge the right of any person to assign, convey, release or renounce any property or an interest therein arising under any other statute.

(8) In clarification and amplification of subsection (1)(a) of this section, and to make clear the existing terms thereof, a renunciation may be made by an agent appointed under a power of attorney, by a conservator or guardian on behalf of an incapacitated person, or by the personal representative or administrator of a deceased person. The ability to renounce on behalf of the person does not need to be specifically set forth in a power of attorney if the power is general in nature.

(9) The due date for filing a timely disclaimer under subsection (2) of this section, where the decedent died after December 31, 2009, but before December 17, 2010, shall be not earlier than September 19, 2011.

History.

I.C., § 15-2-801, as added by 1978, ch. 173, § 2, p. 395; am. 2000, ch. 182, § 1, p. 450; am. 2011, ch. 106, § 1, p. 271.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 106, changed the designation scheme in the section; at the end of paragraph (1)(c), substituted "pursuant to part 4, chapter 1, title 15, Idaho Code" for "provided by this act"; added the exception at the beginning in subsection (2); deleted former subsection (h), which read: "An interest in property existing on the effective date of this act as to which, if a present interest, the time for filing a renunciation has not expired, or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be renounced within nine (9) months after the effective date of this act"; and added subsection (9).

Compiler's Notes.

Brackets were placed around the word "the" near the beginning of subsection (2) to indicate that the word is surplusage in the 2011 amendment.

Effective Dates.

Section 2 of S.L. 2011, ch. 106 declared an emergency retroactively to January 1, 2010, for all decedents who die on or after January 1, 2010. Approved March 22, 2011.

CHAPTER 3

PROBATE OF WILLS AND ADMINISTRATION

PART 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

SECTION.
15-3-715. Transactions authorized for personal representatives — Exceptions.

PART 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

SECTION.
15-3-914. Disposition of unclaimed assets.

PART 1. GENERAL PROVISIONS

15-3-103. Necessity of appointment for administration.

JUDICIAL DECISIONS

Illustrative Cases.

Decedent's son was not acting as a personal representative of decedent's estate when he sold property because he had not been appointed by order of the court under this section. Carpenter v. Turrell, 148 Idaho 645, 227 P.3d 575 (2010).

15-3-108. Probate — Testacy and appointment proceedings — Ultimate time limit.

JUDICIAL DECISIONS

Limitations.

Section 15-1-106 allows for the commencement of an action, within two years, against the perpetrator of a fraud, but it does not toll the three-year statute of limitations in this section. Erickson v. McKee (In re Estate of McKee), — Idaho —, 283 P.3d 749 (2012).

PART 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

15-3-703. General duties — Relation and liability to persons interested in estate — Standing to sue.

JUDICIAL DECISIONS

Wrongful Death.

Because the decedent's own cause of action against an underinsured motorist abated upon her death, her personal representative, and heirs who were not insureds under the policy, were not entitled to payment for wrongful death pursuant to her underinsured motorist coverage. Farm Bureau Mut. Ins. Co. v. Eisenman, — Idaho —, 286 P.3d 185 (2012).

15-3-715. Transactions authorized for personal representatives — Exceptions. — Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-3-902 of this code, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) Receive assets from fiduciaries, or other sources;

(3) Exercise the same power as the decedent in performance, compromise or refusal to perform the decedent's contracts which continue as obligations of the decedent's estate. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action may:

(a) Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) Vote stocks or other securities in person or by general or limited proxy;

(13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) Hold a security in the name of a nominee or in other form without

disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) In the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(b) In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) Incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) Satisfy and settle claims and distribute the estate as provided in this code;

(28) Take control of, conduct, continue or terminate any accounts of the decedent on any social networking website, any microblogging or short message service website or any e-mail service website.

History.
I.C., § 15-3-715, as added by 1971, ch. 111, § 1, p. 233; am. 2011, ch. 69, § 1, p. 144.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 69, added subsection (28).

JUDICIAL DECISIONS

Wrongful Death.
Because the decedent's own cause of action against an underinsured motorist abated upon her death, her personal representative, and heirs who were not insureds under the policy, were not entitled to payment for wrongful death, pursuant to her underinsured motorist coverage. Farm Bureau Mut. Ins. Co. v. Eisenman, — Idaho —, 286 P.3d 185 (2012).

15-3-720. Expenses in estate litigation.

JUDICIAL DECISIONS

Attorney's Fees.
In a probate action, a personal representative was not entitled to attorney's fees; although client's agreement with his attorney was for a lump sum, the attorney had to provide a memorandum of costs specifying at least the total time provided for his work for a determination of reasonableness under I.R.C.P. 54(e)(3). In re Estates of Bailey, — Idaho —, 284 P.3d 970 (2012).

Part 8. Creditors' Claims

15-3-805. Classification of claims.

RESEARCH REFERENCES

Idaho Law Review. — Paying for Long-Term Care in the Gem State, Andrew M. Hyer. 48 Idaho L. Rev. 351 (2012).

Part 9. Special Provisions Relating to Distribution

15-3-914. Disposition of unclaimed assets. — If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his trustee if one has been appointed or, if no trustee has been appointed, shall file the report of abandoned property required by section 14-517, Idaho Code, and deliver the property in the manner set forth in section 14-519, Idaho Code.

History.

I.C., § 15-3-914, as added by 1971, ch. 111, § 1, p. 233; am. 1980, ch. 281, § 4, p. 730; am. 1984, ch. 36, § 5, p. 60; am. 1992, ch. 21, § 8, p. 67; am. 2007, ch. 97, § 4, p. 280; am. 2012, ch. 215, § 4, p. 584.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 215, substituted "deliver the property in the manner set forth in section 14-519, Idaho Code" for "proceed to dispose of the property in the manner set forth in the 'unclaimed property act,' provided, however, that in the event no person appears to claim such property within one thousand eight hundred twenty-seven (1,827) days, approximately five (5) years, from the date of the appointment of the personal representative, the moneys or property so deposited shall accrue and be transferred to the public school permanent endowment fund created pursuant to section 4, article IX, of the constitution of the state of Idaho".

CHAPTER 5

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 2. GUARDIANS OF MINORS

SECTION.
15-5-207. Court appointment of guardian of minor — Procedure.
15-5-213. De facto custodian.

PART 3. GUARDIANS OF INCAPACITATED PERSONS

15-5-308. Visitor in guardianship proceeding.
15-5-311. Who may be guardian — Priorities.
15-5-316. Guardian ad litem — Rights and powers.

PART 4. PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

SECTION.
15-5-401. Protective proceedings.
15-5-407. Procedure concerning hearing and order on original petition.
15-5-424. Powers of conservator in administration.

PART 6. BOARDS OF COMMUNITY GUARDIAN

15-5-602. Board structure — Powers and duties.

PART 1. GENERAL PROVISIONS

15-5-101. Definitions and use of terms.

JUDICIAL DECISIONS

Incapacity.

A judicial finding of incapacity and the appointment of a guardian must be supported by evidence of multiple events that demonstrate the individual's inability to care for his basic needs, property, and financial affairs, such that appointment of a guardian who is capable of making those decisions in his stead is justified. Rogers v. Household Life Ins. Co., 150 Idaho 735, 250 P.3d 786 (2011).

Cited in: Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380 (2012).

15-5-104. Delegation of powers by parent or guardian.

JUDICIAL DECISIONS

Visitation.

Appointment of paternal grandparents as co-guardians of children whose parents had been killed in an auto accident was improper where the purpose of the appointment was to ensure the paternal grandparents could make medical decisions and travel internationally with the children while the children were visiting them. The testamentary guardian had full authority to delegate these powers to

the paternal grandparents as necessary. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

Part 2. Guardians of Minors

15-5-201. Status of guardian of minor — General.

JUDICIAL DECISIONS

Testamentary Appointment.

When two minor children were orphaned when their parents were killed in a car accident, maternal grandmother was their testamentary guardian in accordance with the terms of the parents' will. When paternal grandparents petitioned for guardianship, § 15-5-204 did not permit the court to appoint them as co-guardians unless testamentary guardianship had been terminated. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

15-5-202. Testamentary appointment of guardian of minor.

JUDICIAL DECISIONS

Appointment of Co-guardian Improper.

Where the testamentary guardian of two minor children whose parents were killed in an auto accident was a fit and proper person to discharge her duties as guardian, and her guardianship had not been terminated, petition of paternal grandparents for guardianship could not be granted, and the appointment of the paternal grandparents as co-guardians was improper. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

15-5-204. Court appointment of guardian of minor — Conditions for appointment.

JUDICIAL DECISIONS

Testamentary Guardian.

No authority to appoint a guardian for a minor exists if a testamentary guardian has accepted an effective appointment by will. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

Where the testamentary guardian of two minor children whose parents were killed in an auto accident was a fit and proper person to discharge her duties as guardian, and her guardianship had not been terminated, petition of paternal grandparents for guardianship could not be granted under this section. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

15-5-207. Court appointment of guardian of minor — Procedure.

— (1) Proceedings for the appointment of a guardian may be initiated by the following persons:

(a) Any relative of the minor;

(b) The minor if he is fourteen (14) or more years of age;

(c) Any person who comes within section 15-5-213(1), Idaho Code; or

(d) Any person interested in the welfare of the minor.

(2) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401, Idaho Code, to:

(a) The minor, if he is fourteen (14) or more years of age;

(b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(c) Any person who comes within section 15-5-213(1), Idaho Code; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section 16-1504(4), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of parental rights pursuant to section 16-2005, Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(4) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(5) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(6) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

History.

I.C., § 15-5-207, as added by 1971, ch. 111, § 1, p. 233; am. 2004, ch. 145, § 1, p. 475; am. 2005, ch. 113, § 1, p. 364; am. 2006, ch. 180, § 1, p. 559; am. 2010, ch. 236, § 2, p. 609.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 236, in the introductory language in subsection (1), added "the following persons"; added the paragraph (1)(a), (1)(b) and (1)(d) designations and paragraph (1)(c); in paragraph (1)(b), inserted "or more" and deleted "a de facto custodian of a minor" from the end; rewrote paragraph (2)(c), which read: "The de facto custodian of the minor, if any"; and in subsection (3), substituted "Idaho Code" for "of this part."

15-5-209. Powers and duties of guardian of minor.

JUDICIAL DECISIONS

Cited in: Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

15-5-210. Termination of appointment of guardian — General.

JUDICIAL DECISIONS

Best Interests Standard.

Parents are not entitled to a presumption of custody that precludes consideration of the best interest of the children, even where it is shown that the circumstances leading to a guardianship have ended. Parents' petition to terminate guardianship constituted a petition for removal under this section. Doe v. Doe (In re Doe), 150 Idaho 432, 247 P.3d 659 (2011).

15-5-212. Resignation or removal proceedings.

JUDICIAL DECISIONS

Analysis

Best interests standard.
Grounds for termination.

Best Interests Standard.

Parents are not entitled to a presumption of custody that precludes consideration of the best interest of the children, even where it is shown that the circumstances leading to a guardianship have ended. Doe v. Doe (In re Doe), 150 Idaho 432, 247 P.3d 659 (2011).

Grounds for Termination.

Where the testamentary guardian of two minor children whose parents were killed in an auto accident was a fit and proper person to discharge her duties as guardian, and her guardianship had not been terminated, petition of paternal grandparents for guardianship could not be granted, and the appointment of the paternal grandparents as co-guardians was improper. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

15-5-213. De facto custodian. — (1) "De facto custodian" means a person who has either been appointed the de facto custodian pursuant to section 32-1705, Idaho Code, or if not so appointed, has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing of a petition for guardianship, has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian, and that recognition of the de facto custodian is in the best interests of the child, the court shall give the person the same standing that is given to each parent in proceedings for appointment of a guardian of a minor. In determining whether recognition of a de facto custodian is in the child's best interests, the court shall consider:

(a) Whether the child is currently residing with the person seeking such standing; and

(b) If the child is not currently residing with the person seeking such standing, the length of time since the person served as the child's primary caregiver and primary financial supporter.

History.

I.C., § 15-5-213, as added by 2004, ch. 145, § 2, p. 475; am. 2005, ch. 113, § 2, p. 364; am. 2010, ch. 236, § 3, p. 609.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 236, in subsection (1), inserted "either been appointed the de facto custodian pursuant to section 32-1705, Idaho Code, or if not so appointed, has"; in paragraph (2)(a), substituted "such standing" for "recognition as a de facto custodian"; and in paragraph (2)(b), substituted "such standing" for "de facto custodian status."

Part 3. Guardians of Incapacitated Persons

15-5-303. Procedure for court appointment of a guardian of an incapacitated person.

JUDICIAL DECISIONS

Capacity to Contract.

The appointment of a guardian with full powers represents a judicial finding that the ward lacks the capacity to contract as a matter of law. Rogers v. Household Life Ins. Co., 150 Idaho 735, 250 P.3d 786 (2011).

15-5-304. Findings — Order of appointment.

JUDICIAL DECISIONS

Capacity to Contract.

The appointment of a guardian with full powers represents a judicial finding that the ward lacks the capacity to contract as a matter of law. Rogers v. Household Life Ins. Co., 150 Idaho 735, 250 P.3d 786 (2011).

15-5-308. Visitor in guardianship proceeding. — (1) A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, psychology, social work, or counseling or has other qualifications that make him suitable to perform the function and is an officer, employee or special appointee of the court with no personal interest in the proceedings. The visitor's report is to include the following information: a description of the nature, cause and degree of incapacity, and the basis upon which this judgment is made; a description of the needs of the person alleged to be incapacitated for care and treatment and the probable residential requirements; a statement as to whether a convicted felon resides in or frequents the incapacitated person's proposed residence; an evaluation of the appropriateness of the guardian or conservator whose appointment is sought and a description of the steps the proposed guardian or conservator has taken or intends to take to meet the needs of the incapacitated person; a description of the abilities of the alleged incapacitated person and a recommendation as to whether a full or limited guardianship or conservatorship should be ordered and, if limited, the visitor's recommendation of the specific areas of authority the limited guardianship or conservatorship should have and the limitations to be placed on the incapacitated person; any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardianship or conservatorship; an analysis of the financial status and assets of the alleged incapacitated person; identification of people with significant interest in the welfare of the alleged incapacitated person who should be informed of the proceedings; a description of the qualifications and relationship of the proposed guardian or conservator; an

explanation of how the alleged incapacitated person responded to the advice of the proceedings and the right to be present at the hearing on the petition; in the case of conservatorship, a recommendation for or against a bond requirement for the proposed conservator, taking into account the financial statement of the person whose appointment is sought.

(2) Any person appointed as a visitor shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer or director under the provisions of section 6-1605, Idaho Code.

(3) The visitor may not also be appointed as guardian ad litem for the person alleged to be incapacitated nor may the guardian ad litem for the person alleged to be incapacitated be appointed as visitor, nor may the visitor and the guardian ad litem for the person alleged to be incapacitated be members or employees of the same entity including, but not limited to, being members or employees of the same law firm.

(4) The court may order a criminal history and background check to be conducted at the proposed guardian's expense on any individual who resides in the incapacitated person's proposed residence. Any such check shall be conducted pursuant to section 56-1004A(2) and (3), Idaho Code.

(5) In preparing their reports, the visitor and guardian ad litem shall consider all information available to them concerning any proposed guardian, conservator and individual who resides in or frequents the incapacitated person's proposed residence including, but not limited to, such information as might be available to the visitor pursuant to section 15-5-311(5), Idaho Code.

History.

I.C., § 15-5-308, as added by 1971, ch. 111, § 1, p. 233; am. 1972, ch. 201, § 20, p. 510; am. 1997, ch. 201, § 1, p. 576; am. 1999, ch. 128, § 2, p. 369; am. 2002, ch. 217, § 1, p. 595; am. 2008, ch. 74, § 1, p. 195; am. 2013, ch. 262, § 1, p. 640.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 262, rewrote subsection (4), which formerly read: "The visitor shall have the discretionary authority to conduct a criminal background check on a proposed guardian, conservator or a person who resides in or frequents the incapacitated person's proposed residence" and added subsection (5).

15-5-311. Who may be guardian — Priorities. — (1) Any competent person, except as set forth hereafter, or a suitable institution may be appointed guardian of an incapacitated person.

(2) The person preferred by the incapacitated person shall be appointed guardian unless good cause be shown why appointment of such person is contrary to the best interests of the incapacitated person. If the incapacitated person is unable to express a preference, any previous expression, including a durable power of attorney for health care, may be considered by the court.

(3) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) The person preferred by the incapacitated person. The court shall

always consider the wishes expressed by an incapacitated person as to who shall be appointed guardian;

(b) The person(s) nominated as health care agent in a durable power of attorney for health care by the incapacitated person, in the order of priority set forth in such power;

(c) The spouse of the incapacitated person;

(d) An adult child of the incapacitated person;

(e) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(f) Any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(g) A person nominated by the person who is caring for him or paying benefits to him.

(4) No convicted felon, or person whose residence is the incapacitated person's proposed residence or will be frequented by the incapacitated person and is frequented by a convicted felon, shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.

(5) No individual shall be appointed as guardian of an incapacitated person unless all of the following first occurs:

(a) The proposed guardian has submitted to and paid for a criminal history and background check conducted pursuant to section 56-1004A(2) and (3), Idaho Code;

(b) Pursuant to an order of the court so requiring, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and background check conducted pursuant to section 56-1004A(2) and (3), Idaho Code;

(c) The findings of such criminal history and background checks have been made available to the visitor and guardian ad litem by the department of health and welfare; and

(d) The proposed guardian provided a report of his or her civil judgments and bankruptcies to the visitor, the guardian ad litem and all others entitled to notice of the guardianship proceeding pursuant to section 15-5-309, Idaho Code.

(6) The provisions of paragraphs (a) and (d) of subsection (5) of this section shall not apply to an institution nor to a legal or commercial entity.

(7) Each proposed guardian and each appointed guardian shall immediately report any change in his or her criminal history and any material change in the information required by subsection (5) of this section to the visitor, guardian ad litem, all others entitled to notice of the guardianship proceeding pursuant to section 15-5-309, Idaho Code, and to the court.

History.

I.C., § 15-5-311, as added by 1971, ch. 111, § 1, p. 233; am. 1999, ch. 128, § 4, p. 369; am. 2000, ch. 179, § 1, p. 447; am. 2004, ch. 52, § 1, p. 242; am. 2008, ch. 74, § 2, p. 196; am. 2013, ch. 262, § 2, p. 640.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 262, added subsections (5), (6), and (7).

15-5-316. Guardian ad litem — Rights and powers. — (1) The guardian ad litem has the rights and powers set forth in this section, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first.

(2) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the ward, and to have all of the rights of the ward, whether conferred by statute, rule of court, or otherwise.

(3) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem, and the guardian's attorney, if any, of all hearings, staff hearings or meetings, investigations, depositions, and significant changes of circumstances of the ward.

(4) Except to the extent prohibited or regulated by federal law, upon presentation of a copy of the order appointing the guardian ad litem, any person or agency including, without limitation, any hospital, school organization, department of health and welfare, doctor, nurse or other health care provider, psychologist, psychiatrist, police department, or mental health clinic, shall permit the guardian ad litem to inspect and copy pertinent records relating to the ward necessary for the proceeding for which the guardian ad litem has been appointed.

(5) The guardian ad litem may request, and the court may order whether in response to such request or otherwise, a criminal history and background check to be conducted at the proposed guardian's expense on any individual who resides in the ward's proposed residence. Any such check shall be conducted pursuant to section 56-1004A(2) and (3), Idaho Code.

History.
I.C., § 15-5-316, as added by 2005, ch. 49, § 2, p. 181; am. 2008, ch. 74, § 4, p. 197; am. 2013, ch. 262, § 3, p. 640.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 262, rewrote subsection (5), which formerly read: "The guardian ad litem shall have the discretionary authority to conduct a criminal background check on a proposed guardian, conservator or person who resides in or frequents the ward's proposed residence."

Part 4. Protection of Property of Persons Under Disability and Minors

15-5-401. Protective proceedings. — Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which

may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (1) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental disability, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (2) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

History.
I.C., § 15-5-401, as added by 1971, ch. 111, § 1, p. 233; am. 1989, ch. 241, § 3, p. 587; am. 2010, ch. 235, § 5, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "mental disability" for "mental deficiency" in subsection (b).

15-5-407. Procedure concerning hearing and order on original petition. — (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it must appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court may appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental disability, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that a basis of the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate order.

History.
I.C., § 15-5-407, as added by 1971, ch. 111, § 1, p. 233; am. 1973, ch. 167, § 14, p. 319; am. 2010, ch. 235, § 6, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted "mental disability" for "mental deficiency" in the second sentence in the second paragraph in subsection (b).

15-5-424. Powers of conservator in administration. — (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) years or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter.

(2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

(a) Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) Receive additions to the estate;

(c) Continue or participate in the operation of any business or other enterprise;

(d) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) Invest and reinvest estate assets in accordance with subsection (2) of this section;

(f) Deposit estate funds in a bank including a bank operated by the conservator;

(g) Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of or abandon an estate asset;

(h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) Subdivide, develop or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(*l*) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
(m) Vote a security, in person or by general or limited proxy;
(n) Pay calls, assessments and any other sums chargeable or accruing against or on account of securities;
(o) Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;
(p) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
(q) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
(r) Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;
(s) Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
(t) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate;
(u) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties;
(v) Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;
(w) Employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;
(x) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;
(y) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator; and
(z) Take control of, conduct, continue or terminate any accounts of the

protected person on any social networking website, any microblogging or short message service website or any e-mail service website.

History.
I.C., § 15-5-424, as added by 1971, ch. 111, § 1, p. 233; am. 1973, ch. 167, § 15, p. 319; am. 2011, ch. 69, § 2, p. 144.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 69, changed the designation scheme in the section and added paragraph (3)(z).

Part 6. Boards of Community Guardian

15-5-602. Board structure — Powers and duties. — (a) Any board of community guardian which is created within a county or counties in a judicial district shall operate under the laws of the state of Idaho, including the Idaho guardianship, conservatorship and trust laws.

(b) A board of community guardian shall consist of not fewer than seven (7) or more than eleven (11) members who are representatives of community interests involving persons needing guardians or conservators as defined by chapter 5, title 15, Idaho Code. Members shall be appointed by the board of county commissioners that created the board of community guardian under section 15-5-601, Idaho Code.

(1) The terms of the members of the board shall be for four (4) years and shall be staggered. A number of members equaling or most closely exceeding one-half (1/2) shall initially be appointed for three (3) years. Any vacancy created by resignation or expiration of term shall be filled in the same manner as the original appointment;

(2) A member will continue to serve on the board until that person's successor is appointed;

(3) The board shall meet not less than once each quarter;

(4) No person shall be a member of a board who is also an employee of the district court or the clerk of the district court;

(5) A board member having previously provided or currently providing services to a ward shall disclose such to the board and abstain from any decision or action taken concerning that particular ward;

(6) Board members and officers shall serve without pay;

(7) Each board shall elect its own chairman and other officers.

(c) A board, in those instances when a guardian and/or conservator is required and no qualified family member or other qualified person has volunteered to serve, may:

(1) Locate a qualified person to serve as guardian and/or conservator; or

(2) Petition the court to be appointed guardian and/or conservator.

(d) The board shall have all the powers and duties where applicable by court order, as provided under section 15-5-312, Idaho Code, and/or sections 15-5-408 and 15-5-424, Idaho Code, and in addition thereto shall:

(1) Locate and recommend to the court, where necessary, that a visitor be appointed as provided in section 15-5-503 [15-5-303], Idaho Code;

(2) Have access to all confidential records, including abuse registry reports that may be maintained by state or private agencies or institu-

tions, which records concern a person for whom the board acts as guardian and/or conservator. The name of the person reporting the alleged abuse shall be subject to disclosure according to chapter 3, title 9, Idaho Code;

(3) Review and monitor the services provided by public and private agencies to any incapacitated person for whom the board acts as guardian and/or conservator and determine the continued need for those services;

(4) Assess a fee for services developed pursuant to this part;

(5) Have the power, subject to the approval of the board of county commissioners, to adopt such rules as are necessary to carry out the duties and responsibilities of the board.

(e) When a board serves as guardian or conservator, it shall be compensated as other guardians or conservators pursuant to Idaho law. If, at the time the board is appointed as guardian and/or conservator, the incapacitated person for whom the board is to act has no funds, the court may waive the payment of fees.

(f) When a board serves as guardian and/or conservator there is created, at the time of filing of the order of appointment, a lien in favor of the board against any real property owned by the ward or protected person, enforceable only upon the termination of the guardianship and/or conservatorship, for all fees which were incurred throughout the duration of the services and which were not paid prior to termination. All fees incurred throughout the duration of the services and which were not paid prior to the termination of services shall relate back to the effective date of the lien. The board must record a notice of said lien within thirty (30) days of filing of the order of appointment. Such liens shall be recorded in every county where property subject to the lien is located. The notice shall contain at least the following information: full court heading of the action in which the appointment was made; the effective date of the lien; the name and address of the board; and any limitations or terms regarding the fees covered by the lien contained in the order of appointment. The court may postpone or arrange for gradual repayment of the fees if the court finds that the immediate repayment would create a hardship on the person.

(g) No member of a board of community guardian, any employees, or any visitor appointed at the request of such board pursuant to section 15-5-303, Idaho Code, shall be liable for civil damages by reason of authorizing medical treatment or surgery for the person for whom the board is appointed, if the board member, employee or visitor, after medical consultation with the person's physician, acts in good faith, is not negligent, and acts within the limits established for the guardian and/or conservator by the court. No such person shall be liable, by reason of his authorization, for injury to the person for whom the guardian and/or conservator has been appointed which injury results from the negligence or other acts of a third person, if the court has authorized the giving of medical consent by the board or the individual members of the board. No such person shall be liable in the performance of acts done in good faith within the scope of his authority as long as the act is not of a wanton or grossly negligent nature. The board of community guardian shall be deemed to be a governmental entity for the purposes of application of the Idaho tort claims act.

History.

I.C., § 15-5-602, as added by 1982, ch. 285, § 14, p. 719; am. 1987, ch. 320, § 2, p. 673; am. 1990, ch. 213, § 8, p. 480; am. 1993, ch. 24, § 1, p. 83; am. 2001, ch. 97, § 1, p. 245; am. 2012, ch. 54, § 1, p. 152.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 54, substituted "A member will continue" for "No person shall be appointed for more than three (3) successive terms or twelve (12) successive years on the board; provided however, that the limitations expressed in this paragraph do not prohibit a person from continuing" at the beginning of paragraph (b)(2).

Compiler's Notes.

The bracketed insertion in subsection (d)(1) was added by the compiler to correct the statutory reference which was incorrect in the original act.

CHAPTER 7

TRUST ADMINISTRATION

PART 2. JURISDICTION OF COURT CONCERNING TRUSTS

15-7-201. Court — Exclusive jurisdiction of trusts.

JUDICIAL DECISIONS

Cited in: Chabot v. Chabot, 2011 U.S. Dist. LEXIS 131361 (D. Idaho Nov. 14, 2011).

CHAPTER 8

TRUST AND ESTATE DISPUTE RESOLUTION ACT

PART 2. JUDICIAL RESOLUTION

15-8-208. Cost — Attorney's fees.

JUDICIAL DECISIONS

Cited in: Quemada v. Arizmendez (In re Estate of Ortega), — Idaho —, 288 P.3d 826 (2012).

CHAPTER 9

FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

SECTION.
15-9-101 — 15-9-106. [Repealed.]

PART 2. RECEIPT AND ACCEPTANCE OF FOREIGN CONSERVATORSHIP

SECTION.
15-9-201 — 15-9-206. [Repealed.]

PART 1. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

15-9-101. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-101, as added by 2006, ch. 182, § 6, p. 565; am. 2008, ch. 73, § 1, p. 192.

15-9-102. Petition. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-102, as added by 2006, ch. 182, § 6, p. 565.

15-9-103. Notice of petition for receipt and acceptance of a foreign guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-103, as added by 2006, ch. 182, § 6, p. 565.

15-9-104. Hearing on the petition for receipt and acceptance of a foreign guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-104, as added by 2006, ch. 182, § 6, p. 565.

15-9-105. Requirements for receipt and acceptance of a foreign guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-105, as added by 2006, ch. 182, § 6, p. 565.

15-9-106. Review of the guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-106, as added by 2006, ch. 182, § 6, p. 565.

Part 2. Receipt and Acceptance of Foreign Conservatorship

15-9-201. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-201, as added by 2006, ch. 182, § 6, p. 565; am. 2008, ch. 73, § 2, p. 193.

15-9-202. Petition. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-202, as added by 2006, ch. 182, § 6, p. 565.

15-9-203. Notice of petition for receipt and acceptance of a foreign conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-203, as added by 2006, ch. 182, § 6, p. 565.

15-9-204. Hearing on the petition for receipt and acceptance of a foreign conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-204, as added by 2006, ch. 182, § 6, p. 565.

15-9-205. Requirements for receipt and acceptance of foreign conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-205, as added by 2006, ch. 182, § 6, p. 565.

15-9-206. Review of the conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 2, effective July 1, 2011.

History.
I.C., § 15-9-206, as added by 2006, ch. 182, § 6, p. 565.

CHAPTER 10

TRANSFERS OF GUARDIANSHIPS AND CONSERVATORSHIPS TO A FOREIGN JURISDICTION

PART 1. TRANSFER OF GUARDIANSHIP TO A FOREIGN JURISDICTION

SECTION.
15-10-101 — 15-10-105. [Repealed.]

PART 2. TRANSFER OF CONSERVATORSHIP TO A FOREIGN JURISDICTION

SECTION.
15-10-201 — 15-10-205. [Repealed.]

PART 1. TRANSFER OF GUARDIANSHIP TO A FOREIGN JURISDICTION

15-10-101. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-101, as added by 2006, ch. 182, § 7, p. 565; am. 2008, ch. 73, § 3, p. 193.

15-10-102. Petition to transfer a guardianship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-102, as added by 2006, ch. 182, § 7, p. 565.

15-10-103. Notice of petition to transfer a guardianship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-103, as added by 2006, ch. 182, § 7, p. 565.

15-10-104. Hearing on the petition to transfer a foreign guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-104, as added by 2006, ch. 182, § 7, p. 565.

15-10-105. Requirements to transfer the guardianship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-105, as added by 2006, ch. 182, § 7, p. 565.

Part 2. Transfer of Conservatorship to a Foreign Jurisdiction

15-10-201. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-201, as added by 2006, ch. 182, § 7, p. 565; am. 2008, ch. 73, § 4, p. 193.

15-10-202. Petition to transfer a conservatorship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-202, as added by 2006, ch. 182, § 7, p. 565.

15-10-203. Notice of petition to transfer a conservatorship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-203, as added by 2006, ch. 182, § 7, p. 565.

15-10-204. Hearing on the petition to transfer a foreign conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-204, as added by 2006, ch. 182, § 7, p. 565.

15-10-205. Requirements to transfer the conservatorship to a foreign jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 3, effective July 1, 2011.

History.
I.C., § 15-10-205, as added by 2006, ch. 182, § 7, p. 565.

CHAPTER 11

TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIPS

SECTION.
15-11-101 — 15-11-103. [Repealed.]

PART 2. TEMPORARY RECOGNITION OF FOREIGN CONSERVATORSHIPS

SECTION.
15-11-201 — 15-10-203. [Repealed.]

PART 1. TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIPS

15-11-101. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-101, as added by 2006, ch. 182, § 8, p. 565; am. 2008, ch. 73, § 5, p. 194.

15-11-102. Petition and notice. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-102, as added by 2006, ch. 182, § 8, p. 565.

15-11-103. Requirements for temporary recognition of a foreign guardianship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-103, as added by 2006, ch. 182, § 8, p. 565.

PART 2. TEMPORARY RECOGNITION OF FOREIGN CONSERVATORSHIPS

15-11-201. Jurisdiction. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-201, as added by 2006, ch. 182, § 8, p. 565.

15-11-202. Petition and notice. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-202, as added by 2006, ch. 182, § 8, p. 565.

15-11-203. Requirements for temporary recognition of a foreign conservatorship. [Repealed.]

Repealed by S.L. 2011, ch. 36, § 4, effective July 1, 2011.

History.
I.C., § 15-11-203, as added by 2006, ch. 182, § 8, p. 565.

CHAPTER 12

UNIFORM POWER OF ATTORNEY ACT

PART 1. GENERAL PROVISIONS AND DEFINITIONS

SECTION.
15-12-108. Nomination of conservator — Relation of agent to court-appointed fiduciary.

PART 1. GENERAL PROVISIONS AND DEFINITIONS

15-12-108. Nomination of conservator — Relation of agent to court-appointed fiduciary. — (1) In a power of attorney, a principal may nominate a conservator of the principal's estate for consideration by the court if protective proceedings for the principal's estate are thereafter commenced.

(2) If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, including appointment of a temporary conservator pursuant to section 15-5-407A, Idaho Code, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is terminated unless otherwise ordered by the court.

History.
I.C., § 15-12-108, as added by 2008, ch. 186, § 2, p. 562; am. 2013, ch. 144, § 1, p. 341.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 144, inserted "including appointment of a temporary conservator pursuant to section 15-5-407A, Idaho Code" in the first sentence and substituted "is terminated unless otherwise ordered" for "is not terminated and the agent's authority continues unless limited, suspended or terminated" in the last sentence in subsection (2).

Effective Dates.
Section 2 of S.L. 2013, ch. 144 provided: "This act shall be in full force and effect on and after July 1, 2013, and the amendments in this act shall apply only to those appointments of temporary or permanent conservators made on or after July 1, 2013."

CHAPTER 13

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

PART 1. GENERAL PROVISIONS

SECTION.
15-13-101. Short title.
15-13-102. Definitions.
15-13-103. International application of chapter.
15-13-104. Communications between courts.
15-13-105. Cooperation between courts.
15-13-106. Taking testimony in another state.

PART 2. JURISDICTION

15-13-201. Definitions — Significant-connection factors.
15-13-202. Exclusive basis.
15-13-203. Jurisdiction.
15-13-204. Special jurisdiction.
15-13-205. Exclusive and continuing jurisdiction.
15-13-206. Appropriate forum.
15-13-207. Jurisdiction declined by reason of conduct.
15-13-208. Notice of proceeding.
15-13-209. Proceedings in more than one state.

PART 3. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

SECTION.
15-13-301. Transfer of guardianship or conservatorship to another state.
15-13-302. Accepting guardianship or conservatorship transferred from another state.

PART 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

15-13-401. Registration of guardianship orders.
15-13-402. Registration of protective orders.
15-13-403. Effect of registration.

PART 5. MISCELLANEOUS PROVISIONS

15-13-501. Uniformity of application and construction.
15-13-502. Relation to electronic signatures in global and national commerce act.
15-13-504. Transitional provision.

OFFICIAL COMMENT

PREFATORY NOTE

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues in adult proceedings. Drafting of the UAGPPJA began in 2005. The Act had its first reading at the Uniform Law Commission 2006 Annual Meeting, and was approved at the 2007 Annual Meeting.

States may enact the UAGPPJA either separately or as part of the broader UGPPA or the even broader Uniform Probate Code (UPC), of which the UGPPA forms a part. Conforming amendments to the UGPPA and UPC are expected to be approved in 2009 that will facilitate enactment of the UAGPPJA by states that have enacted the UGPPA or UPC.

The Problem of Multiple Jurisdiction

Because the United States has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present. In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a second home in another state. There is a need for an effective

mechanism for resolving multi-jurisdictional disputes. Article [Part] 2 of the UAGPPJA is intended to provide such a mechanism.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that an already existing guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article [Part] 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection.

The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state. Article [Part] 4 of the UAGPPJA creates a registration procedure. Following registration of the guardianship or protective order in the second state, the guardian may exercise in the second state all powers authorized in the original state's order of appointment except for powers that cannot be legally exercised in the second state.

The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the United States in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more that one state had jurisdiction to issue custody orders. But the Uniform Law Conference has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters; the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article [Part] 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article [Part] 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order and contains definitions applicable only to that article. Its principal objective is to assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article [Part] 3 specifies a procedure for transferring a guardianship or conservatorship proceedings from one state to another state. Article [Part] 4 deals with enforcement of guardianship and protective orders in other states. Article [Part] 5 contains an effective date provision, a place to list provisions of existing law to be repealed or amended, and boilerplate provisions common to all uniform acts.

Key Definitions (Section 201 [§ 15-13-201])

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" (Section 201(a)(2) [§ 15-13-201(1)(b)]) is the state in which the individual was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or appointment of a guardian. If the respondent was not physically present in a single state for the six months immediately preceding the filing of the petition, the home state is the place where the respondent was last physically present for at least six months as long a such presence ended within the six months prior to the filing of the petition. Section 201(a)(2) [§ 15-31-201(1)(b)]. Stated another way, the ability of the home state to appoint a guardian or enter a protective order for an individual continues for up to six months following the individual's physical relocation to another state.

A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available. Section 201(a)(3) [§ 15-13-201(1)(c)]. Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of

the guardianship or protective proceeding;
- the length of time the respondent was at any time physically present in the state and the duration of any absences;
- the location of the respondent's property; and
- the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services. Section 201(b) [§ 15-13-201(2)].

A respondent in a guardianship or protective proceeding may have multiple significant-connection states but will have only one home state.

Jurisdiction (Article 2)

Section 203 [§ 15-13-203] is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order.
- *Significant-connection State:* A significant-connection state has jurisdiction to appoint a guardian or conservator or issue another type of protective order if on the date the petition was filed:
  - the respondent does not have a home state or the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum; or
    - the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order (i) a petition for an appointment or order is not filed in the respondent's home state; (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206 [§ 15-13-206].
- *Another State:* A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction because the court in the other state is a more appropriate forum, or the respondent does not have a home state or significant-connection state.

Section 204 [§ 15-13-204] addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203 [§ 15-13-203], a court in the state where the respondent is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where a respondent's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 [§ 15-13-203] has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article [Part] 3.

The remainder of Article [Part] 2 elaborates on these core concepts. Section 205 [§ 15-13-205] provides that once a guardian or conservator is appointed or other protective order is issued, the court's jurisdiction continues until the proceeding is terminated or transferred or the appointment or order expires by its own terms. Section 206 [§ 15-13-206] authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 [§ 15-13-207] authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 [§ 15-13-208] prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 [§ 15-13-209] specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states, requests for assistance made by a court to a court of another state, and the taking of testimony in another state. Sections 104-106 [§§ 15-13-104 to 15-13-106].

Transfer to Another State (Article [Part] 3)

Article [Part] 3 specifies a procedure for transferring an already existing guardianship or conservatorship to another state. To make the transfer, court orders are necessary from both the court transferring the case and from the court accepting the case. The transferring court must find that the incapacitated or protected person is physically present in or is reasonably expected to move permanently to the other state, that adequate arrangements have been made for the person or the person's property in the other state, and that the court is satisfied the case will be accepted by the court in the other state. To assure continuity, the court in the transferring state cannot

dismiss the local proceeding until the order from the state accepting the case is filed with the transferring court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article [Part] 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article [Part] 4)

To facilitate enforcement of guardianship and protective orders in other states, Article [Part] 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise in the registration state all powers authorized in the order except as prohibited by the laws of the registration state.

International Application (Section 103 [§ 15-13-103])

Section 103 [§ 15-13-103] addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures under Article [Part] 4, but a court in the United State may otherwise apply the Act as if the foreign country were an American state.

The Problem of Differing Terminology

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person;" a "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology used in the UGPPA and in a majority of the states. An enacting state that uses a different term than "guardian" or "conservator" for the person appointed by the court or that defines either of these terms differently than does the UGPPA may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

The Drafting Committee was assisted by numerous officially designated advisors and observers, representing an array of organizations. In addition to the American Bar Association advisors listed above, important contributions were made by Sally Hurme of AARP, Terry W. Hammond of the National Guardianship Association, Kathleen T. Whitehead and Shirley B. Whitenack of the National Academy of Elder Law Attorneys, Catherine Anne Seal of the Colorado Bar Association, Kay Farley of the National Center for State Courts, and Robert G. Spector, the Reporter for the Joint Editorial Board for Uniform Family Laws and the Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

Part 1. General Provisions

OFFICIAL COMMENT

Article [Part] 1 contains definitions and general provisions used throughout the Act. Definitions applicable only to Article [Part] 2 are found in Section 201 [§ 15-13-201]. Section 101 [§ 15-13-101] is the title, Section 102 [§ 15-13-102] contains the definitions, and Sections 103-106 [§ 15-13-103 to 15-13-106] the general provisions. Section 103 [§ 15-13-103] provides that a court of an enacting state may treat a foreign country as a state for the purpose of applying all portions of the Act other than Article [Part] 4, Section 104 [§ 15-13-104] addresses communication between courts, Section 105 [§ 15-13-105] requests by a court to a court in another state for assistance, and Section 106 [§ 15-13-106] the taking of testimony in other states. These Article [Part] 1 provisions relating to court communication and assistance are essential tools to assure the effectiveness of the provisions of Article [Part] 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as authorized in Article [Part] 3.

15-13-101. Short title. — This chapter may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

History.
I.C., § 15-13-101, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

15-13-102. Definitions. — In this chapter:

(1) "Adult" means an individual who has attained eighteen (18) years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed pursuant to chapter 5, title 15, Idaho Code.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed pursuant to chapter 5, title 15, Idaho Code.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian

tribe or any territory or insular possession subject to the jurisdiction of the United States.

History.
I.C., § 15-13-102, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

The definition of "adult" (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

Three of the other definitions are standard uniform law terms. These are the definitions of "person" (paragraph (8)), "record" (paragraph (12)), and "state" (paragraph (14)). Two are common procedural terms. The individual for whom a guardianship or protective order is sought is a "respondent" (paragraph (13)). A person who may participate in a guardianship or protective proceeding is referred to as a "party" (paragraph (7)).

The remaining definitions refer to standard guardianship terminology used in a majority of states. A "guardian" (paragraph (3)) is appointed in a "guardianship order" (paragraph (4)) which is issued as part of a "guardianship proceeding" (paragraph (5)) and which authorizes the guardian to make decisions regarding the person of an "incapacitated person" (paragraph (6)). A "conservator" (paragraph (2)) is appointed pursuant to a "protective order" (paragraph (10)) which is issued as part of a "protective proceeding" (paragraph (11)) and which authorizes the conservator to manage the property of a "protected person" (paragraph (9)).

In most states, a protective order may be issued by the court without the appointment of a conservator. For example, under the Uniform Guardianship and Protective Proceedings Act, the court may authorize a so-called single transaction for the security, service, or care meeting the foreseeable needs of the protected person, including the payment, delivery, deposit, or retention of property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for life care, deposit contract, or contract for training and education; and the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this reason that the Act contains frequent references to the broader category of protective orders. Where the Act is intended to apply only to conservatorships, such as in Article [Part] 3 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not to the broader category of protective proceeding.

The Act does not limit the types of conservatorships or guardianships to which the Act applies. The Act applies whether the conservatorship or guardianship is denominated as plenary, limited, temporary or emergency. The Act, however, would not ordinarily apply to a guardian ad litem, who is ordinarily appointed by the court to represent a person or conduct an investigation in a specified legal proceeding.

Section 102 [§ 15-13-102] is not the sole definitional section in the Act. Section 201 [§ 15-13-201] contains definitions of important terms used only in Article [Part] 2. These are the definitions of "emergency" (Section 201(1) [§ 15-13-201(1)(a)]), "home state" (Section 201(2) [§ 15-13-201(1)(b)]), and "significant-connection state" (Section 201(3) [§ 15-13-201(1)(c)]).

15-13-103. International application of chapter. — A court of this state may treat a foreign country as if it were a state for the purpose of applying part 1 of this chapter and parts 2, 3 and 5 of this chapter.

History.
I.C., § 15-13-103, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Article [Part] 4, but a court in this country may otherwise apply this Act to a foreign proceeding as if the foreign country were an American state. Consequently, a

court may conclude that the court in the foreign country has jurisdiction because it constitutes the respondent's "home state" or "significant-connection state" and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section 203 [§ 15-13-203]. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Article [Part] 3.

This section addresses similar issues to but differs in result from Section 105 [§ 15-13-105] of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because guardianship regimes vary so greatly around the world, particularly in civil law countries, it was concluded that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to recognize the foreign order.

The fact that a guardianship or protective order of a foreign country cannot be enforced pursuant to the registration procedures of Article [Part] 4 does not preclude enforcement by the court under some other provision or rule of law.

15-13-104. Communications between courts. — (1) A court of this state may communicate with a court in another state concerning a proceeding arising pursuant to this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

History.
I.C., § 15-13-104, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article [Part] 2. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under Article [Part] 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

This section includes brackets around the language relating to whether a record must be made of any communication with the court of the other state. As indicated by the Legislative Note to this section, the language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers. The language is not bracketed because the drafters concluded that the making of a record is not important. Rather, if concerns about separation of powers leads to the deletion of the bracketed language, the enacting state is encouraged to achieve the objectives of the bracketed language by promulgating a comparable provision by judicial rule.

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conver-

sation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.

15-13-105. Cooperation between courts. — (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing pursuant to paragraph (a) of this subsection or any other proceeding, any evidence otherwise produced pursuant to paragraph (b) of this subsection, and any evaluation or assessment prepared in compliance with an order pursuant to paragraph (c) or (d) of this subsection;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 160.103, as amended.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

History.

I.C., § 15-13-105, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

Subsection (a) [(1)] of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (a)(7) [(1)(g)], which addresses the release of health information protected under HIPAA. Subsection (b) [(2)], which clarifies that a court has jurisdiction to respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a jurisdictional issue arising under Article [Part] 2 or an issue concern-

ing a transfer proceeding under Article [Part] 3.

This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party's unjustifiable conduct, Section 207(b) [§ 15-13-207(2)] authorizes the court to assess against the party all costs and expenses, including attorney's fees.

15-13-106. Taking testimony in another state. — (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone, audio-visual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

History.
I.C., § 15-13-106, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

Subsection (a) [(1)] empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

Subsections (b) [(2)] and (c) [(3)] clarify that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence. A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c) [(3)] , which has been placed in brackets for this reason.

This section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

Part 2. Jurisdiction

OFFICIAL COMMENT

The jurisdictional rules in Article [Part] 2 will determine which state's courts may appoint a guardian or conservator or issue another type of protective order. Section 201 [§ 15-13-201] contains definitions of "emergency," "home state," and "significant-connection state," terms used only in Article [Part] 2 that are key to understanding the jurisdictional rules under the Act. Section 202 [§ 15-13-202] provides that Article [Part] 2 is the

exclusive jurisdictional basis for a court of the enacting state to appoint a guardian or issue a protective order for an adult. Consequently, Article [Part] 2 is applicable even if all of the respondent's significant contacts are in-state. Section 203 [§ 15-13-203] is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions. But there are circumstances under Section 203 [§ 15-13-203] where a significant-connection state may have jurisdiction even if the respondent also has a home state, or a state that is neither a home or significant-connection state may be able to assume jurisdiction even though the particular respondent has both a home state and one or more significant-connection states. One of these situations is if a state declines to exercise jurisdiction under Section 206 [§ 15-13-206] because a court of that state concludes that a court of another state is a more appropriate forum. Another is Section 207 [§ 15-13-207], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 205 [§ 15-13-205] provides that once an appointment is made or order issued, the court's jurisdiction continues until the proceeding is terminated or the appointment or order expires by its own terms.

Section 204 [§ 15-13-204] addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203 [§ 15-13-203], a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 [§ 15-13-203] has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article [Part] 3.

The remainder of Article [Part] 2 address procedural issues. Section 208 [§ 15-13-208] prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 [§ 15-13-209] specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state.

15-13-201. Definitions — Significant-connection factors. — (1) In this part:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare, including finances, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining whether a respondent has a significant connection with a particular state pursuant to sections 15-13-203 and 15-13-301(5), Idaho Code, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting

registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.

History.
I.C., § 15-13-201, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

The terms "emergency," "home state," and "significant-connection state" are defined in this section and not in Section 102 [§ 15-13-102] because they are used only in Article [Part] 2.

The definition of "emergency" (subsection (a)(1) [(1)(a)]) is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section 204 [§ 15-13-204] of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b) [§ 15-13-204(2)], the emergency proceeding must be dismissed at the request of the court in the respondent's home state.

Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203 [§ 15-13-203].

Pursuant to Section 203 [§ 15-13-203], a court in the respondent's home state has primary jurisdiction to appoint a guardian or issue a protective order. A court in a significant-connection state has jurisdiction if the respondent does not have a home state and in other circumstances specified in Section 203 [§ 15-13-203]. The definitions of "home state" and "significant-connection state" are therefore important to an understanding of the Act.

The definition of "home state" (subsection (a)(2) [(1)(b)]) is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has "lived" for the prior six months. Basing the test on where someone has "lived" may imply that the term "home state" is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the respondent was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of "significant-connection state" (subsection (a)(3) [(1)(c)]) is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, subsection (b) [(2)] of this Section adds a list of factors relevant to adult guardianship and protective proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1) [§ 15-13-301(5)(a)], the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state

15-13-202. Exclusive basis. — This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

History.
I.C., § 15-13-202, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a guardian or issue a protective order for an adult. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in guardianship and protective proceedings cases. A Legislative Note to Section 503 [§ 15-13-503] provides guidance on which provisions need to be repealed or amended. The drafters of this Act concluded that limiting the Act to "interstate" cases was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state's existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

15-13-203. Jurisdiction. — A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 15-13-206, Idaho Code;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 15-13-204, Idaho Code, are met.

History.
I.C., § 15-13-203, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

Similar to the Uniform Child Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order; the home state (defined in Section 201(a)(2) [§ 15-13-201(1)(b)]),

followed by a significant-connection state (defined in Section 201(a)(3) [§ 15-13-201(1)(c)]), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for the special circumstances specified in Section 204 [§ 15-13-204].

While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a guardian or issue a protective order, it is not the only provision. As indicated in the cross-reference in Section 203(4) [§ 15-13-203(4)], a court that does not otherwise have jurisdiction under Section 203 [§ 15-13-203] may have jurisdiction under the special circumstances specified in Section 204 [§ 15-13-204].

Pursuant to Section 203(1) [§ 15-13-203(1)], the home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section 206 [§ 15-13-206] on the basis that another state is a more appropriate forum, or, as provided in Section 205 [§ 15-13-205], a court of another state has appointed a guardian or issued a protective order consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section 206 [§ 15-13-206]. Should the home state not have enacted the Act, Section 203(1) [§ 15-13-203(1)] does not require that the declination meet the standards of Section 206 [§ 15-13-206].

Once a petition is filed in a court of the respondent's home state, that state does not cease to be the respondent's home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the respondent is physically located. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of "home state," the six-month physical presence requirement is fulfilled or not on the date the petition is filed. See Section 201(a)(2) [§ 15-13-201(1)(b)].

A significant-connection state has jurisdiction under two possible bases; Section 203(2)(A) [§ 15-13-203(2)(a)] and Section 203(2)(B) [§ 15-13-203(2)(b)]. Under Section 203(2)(A) [§ 15-13-203(2)(a)], a significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.

Section 203(2)(B) [§ 15-13-203(2)(b)] is designed to facilitate consideration of cases where jurisdiction is not in dispute. Section 203(2)(B) [§ 15-13-203(2)(b)] allows a court in a significant-connection state to exercise jurisdiction even though the respondent has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear the case. Jurisdiction may not be exercised by a significant-connection state under Section 203(2)(B) [§ 15-12-203(2)(b)] if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment or issuing the order, a petition is filed in the respondent's home state or an objection to the court's jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section 206 [§ 15-13-206].

There is nothing comparable to Section 203(2)(B) in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 [§ 15-13-201] of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

Pursuant to Section 203(3) [§ 15-13-203(3)], a court in a state that is neither the home state or a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the respondent does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As Section 203(a)(3) [§ 15-13-203(3)] clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.

15-13-204. Special jurisdiction. — (1) A court of this state lacking jurisdiction pursuant to section 15-13-203(1) through (3), Idaho Code, has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state;

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 15-13-301, Idaho Code.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

History.
I.C., § 15-13-204, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section lists the special circumstances where a court without jurisdiction under the general rule of Section 203 [§ 15-13-203] has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically located in the state (subsection (a)(1) [(1)(a)]); (2) the issuance of a protective order for a respondent who owns an interest in real or tangible personal property located in the state (subsection (a)(2) [(1)(b)]); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (a)(3) [(1)(c)]). If the court has jurisdiction under Section 203 [§ 15-13-203], reference to Section 204 [§ 15-13-204] is unnecessary. The general jurisdiction granted under Section 203 [§ 15-13-203] includes within it all of the special circumstances specified in this section.

When an emergency arises, action must often be taken on the spot in the place where the respondent happens to be physically located at the time. This place may not necessarily be located in the respondent's home state or even a significant-connection state. Subsection (a)(1) [(1)(a)] assures that the court where the respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of 90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency guardianship procedures. As provided in subsection (b) [(2)], the emergency jurisdiction is also subject to the authority of the court in the respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment through repeated temporary appointments.

"Emergency" is specifically defined in Section 201(a)(1) [§ 15-13-201(1)(a)]. Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203 [§ 15-13-203].

Subsection (a)(2) [(1)(b)] grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

Subsection (a)(3) [(1)(c)] is closely related to and is necessary for the effectiveness of Article [Part] 3, which addresses transfer of a guardianship or conservatorship to another state. A "Catch-22" arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case

until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (a)(3) [(1)(c)], which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding form another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section 105(b) [§ 15-13-105(2)], which grants the court jurisdiction to respond to a request for assistance from a court of another state.

15-13-205. Exclusive and continuing jurisdiction. — Except as otherwise provided in section 15-13-204, Idaho Code, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

History.
I.C., § 15-13-205, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 [§ 15-13-202] of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or unavailability of substantial evidence. Section 203 [§ 15-13-203] of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a guardianship or protective order may be modified only upon request to the court that made the appointment or issued the order, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, guardianships and protective proceedings are ordinarily subject to continuing court supervision. Allowing the court's jurisdiction to terminate other than by its own order would open the possibility of competing guardianship or conservatorship appointments in different states for the same person at the same time, the problem under current law that enactment of this Act is designed to avoid. Should the incapacitated or protected person and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Article [Part] 3.

The exclusive and continuing jurisdiction conferred by this section only applies to guardianship orders made and protective orders issued under Section 203 [§ 15-13-203]. Orders made under the special jurisdiction conferred by Section 204 [§ 15-13-204] are not exclusive. And as provided in Section 204(b) [§ 15-13-204(2)], the jurisdiction of a court in a state other than the home state to appoint a guardian in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.

Article [Part] 3 authorizes a guardian or conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the guardian or conservator as guardian or conservator in the accepting state and the court in the transferring estate will terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section 205 [§ 15-13-205].

15-13-206. Appropriate forum. — (1) A court of this state having jurisdiction pursuant to section 15-13-203, Idaho Code, to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether there is reason to suspect that abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator.

History.
I.C., § 15-13-206, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a guardianship or protective order determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section 203 [§ 15-13-203]. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) except that the factors in Section 206(c) [§ 15-13-206(3)] of this Act have been adapted to address issues most commonly encountered in adult guardianship and protective proceedings as opposed to child custody determinations.

Under Section 203(2)(B) [§ 15-13-203(2)(b)], the factors specified in subsection (c) [(3)] of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the respondent's home state or in another significant-connection state. Under Section 207(a)(3)(B) [§ 15-13-207(1)(c)(ii)], the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

15-13-207. Jurisdiction declined by reason of conduct. — (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 15-13-206(c), Idaho Code; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 15-13-203, Idaho Code.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than this chapter.

History.

I.C., § 15-13-207, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable conduct," concluding that this issue is best left to the courts. However, a common example could include the unauthorized removal of an adult to another state, with that state acquiring emergency jurisdiction under Section 204 [§ 15-13-204] immediately upon the move and home state jurisdiction under Section 203 [§ 15-13-203] six months following the move if a petition for a guardianship or protective order is not filed during the interim in the soon-to-be former home state. Although child custody cases frequently raise different issues than do adult guardianship matters, the element of unauthorized removal is encountered in both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, Parties' Misconduct as Grounds for Declining Jurisdiction Under § 8 of the Uniform Child Custody Jurisdiction Act (UCCJA), 16 A.L.R. 5th 650 (1993).

Subsection (a) [(1)] gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under subsection (a) [(1)], the unjustifiable conduct need not have been committed by a party.

Subsection (b) [(2)] authorizes a court to assess costs and expenses, including attorney's fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. Subsection (b) [(2)] applies only if the unjustifiable conduct was committed by a

party and allows for costs and expenses to be assessed only against that party. Similar to Section 208 [§ 15-13-208] of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

15-13-208. Notice of proceeding. — If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding was brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

History.
I.C., § 15-13-208, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

While this Act tries not to interfere with a state's underlying substantive law on guardianship and protective proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the respondent's home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the respondent's home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion.

15-13-209. Proceedings in more than one state. — Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state pursuant to section 15-13-204(1)(a) or (1)(b), Idaho Code, if a petition for the appointment of a guardian or issuance of a conservatorship or other protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction pursuant to section 15-13-203, Idaho Code, it may proceed with the case unless a court in another state acquires jurisdiction pursuant to provisions similar to section 15-13-203, Idaho Code, before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction pursuant to section 15-13-203, Idaho Code, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

History.
I.C., § 15-13-209, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same respondent are brought in more than one state. The provisions of this section, however, have been tailored to the needs of adult guardianship and protective proceedings and the particular jurisdictional provisions of this Act. Emergency guardianship appointments and protective proceedings with respect to property in other states (Sections 204(a)(1) and (a)(2) [§§ 15-13-204(1)(a) and (1)(b)]) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the respondent's home state but emergency action will be necessary in the place where the respondent is temporarily located, or a petition for the appointment of a conservator will be brought in the respondent's home state but real estate located in some other state needs to be brought under management.

Under the Act only one court in which a petition is pending will have jurisdiction under Section 203 [§ 15-13-203]. If a petition is brought in the respondent's home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment or issuance of an order in the significant-connection state. Jurisdiction will also be lost in the significant-connection state if the respondent has a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.

Under this section, if the court has jurisdiction under Section 203 [§ 15-13-203], it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction under Section 203 [§ 15-13-203], it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section 203 [§ 15-13-203] there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections 104-106 [§§ 15-13-104 to 15-13-106] will sometimes be necessary to determine which court that might be.

Part 3. Transfer of Guardianship or Conservatorship to Another State

OFFICIAL COMMENT

While this article consists of two separate sections, they are part of one integrated procedure. Article [Part] 3 authorizes a guardian or conservator to petition the court to transfer the guardianship or conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Article [Part] 3 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that both categories of proceeding be administered in the same state.

Section 301 [§ 15-13-301] addresses procedures in the transferring state. Section 302 [§ 15-13-302] addresses procedures in the accepting state.

A transfer begins with the filing of a petition by the guardian or conservator as provided in Section 301(a) [§ 15-13-301(1)]. Notice of this petition must be given to the persons who would be entitled to notice were the petition a petition for an original appointment. Section 301(b) [§ 15-13-301(2)]. A hearing on the petition is required only if requested or on the court's own motion. Section 301(c) [§ 15-13-301(3)]. Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section 301(d) [§ 15-13-301(4)] (guardianship) or 301(e) [§ 15-13-301(5)] (conservatorship) have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section 301(f) [§ 15-13-301(6)], it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.

Following issuance of the provisional order by the transferring court, a petition must be

filed in the accepting court as provided in Section 302(a) [§ 15-13-302(1)]. Notice of that petition must be given to those who would be entitled to notice of an original petition for appointment in both the transferring state and in the accepting state. Section 302(b) [§ 15-13-302(2)]. A hearing must be held only if requested or on the court's own motion. Section 302(c) [§ 15-13-302(3)]. The court must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state. Section 302(d) [§ 15-13-302(4)]. The term "interests" as opposed to "best interests" was chosen because of the strong autonomy values in modern guardianship law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a guardian or issuance of a protective order only if the court has a basis for jurisdiction under Sections 203 or 204 [§§ 15-13-203 or 15-13-204] other than by reason of the provisional order of transfer. Section 302(h) [§ 15-13-302(8)].

The final steps are largely ministerial. Pursuant to Section 301(f) [§ 15-13-301(6)], the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to local requirements such as filing of a final report or account and the release of any bond. Pursuant to Section 302(e) [§ 15-13-302(5)], the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state.

Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state. Section 302(f) [§ 15-13-302(6)]. The number "90"is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as guardianship or conservatorship plans. This initial period in the accepting state is also an appropriate time to change the guardian or conservator if there is a more appropriate person to act as guardian or conservator in the accepting state. The drafters specifically did not try to design the procedures in Article [Part] 3 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian. Rather, the procedures in Article [Part] 3 are designed for the typical case where the guardian or conservator is legally eligible to act in the second state. Should that particular guardian or conservator not be the best person to act in the accepting state, a change of guardian or conservator can be initiated once the transfer has been secured.

The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the respondent is physically present in the state, a problem which Section 204(a)(3) [§ 15-13-204(1)(c)] addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator. Article [Part] 3 eliminates this problem. Section 302(g) [§ 15-13-302(7)] requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

15-13-301. Transfer of guardianship or conservatorship to another state. — (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition pursuant to subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 15-13-201(b), Idaho Code;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 15-13-302, Idaho Code; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

History.
I.C., § 15-13-301, as added by 2011, ch. 36, § 1, p. 79.

15-13-302. Accepting guardianship or conservatorship transferred from another state. — (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 15-13-301, Idaho Code, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition pursuant to subsection (1) of this section must be

given to those persons that would be entitled to notice if the petition was a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed pursuant to subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing a guardian or conservator as guardian or conservator in this state upon its receipt, from the court from which the proceeding is being transferred, of a final order issued under provisions similar to section 15-13-301, Idaho Code, transferring the proceeding to this state.

(6) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of a guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state pursuant to chapter 5, title 15, Idaho Code, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

History.
I.C., § 15-13-302, as added by 2011, ch. 36, § 1, p. 79.

Part 4. Registration and Recognition of Orders from Other States

OFFICIAL COMMENT

Article [Part] 4 is designed to facilitate the enforcement of guardianship and protective orders in other states. This article does not make distinctions among the types of orders that can be enforced. This article is applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed,

problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.

Article [Part] 4 provides for such recognition. The key concept is registration. Section 401 [§ 15-13-401] provides for registration of guardianship orders, and Section 402 [§ 15-13-402] for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 403 [§ 15-13-403] authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

15-13-401. Registration of guardianship orders. — If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

History.
I.C., § 15-13-401, as added by 2011, ch. 36, § 1, p. 79.

15-13-402. Registration of protective orders. — If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

History.
I.C., § 15-13-402, as added by 2011, ch. 36, § 1, p. 79.

15-13-403. Effect of registration. — (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available pursuant to this chapter and other law of this state to enforce a registered order.

History.
I.C., § 15-13-403, as added by 2011, ch. 36, § 1, p. 79.

Part 5. Miscellaneous Provisions

15-13-501. Uniformity of application and construction. — In applying and construing this uniform act, consideration must be given to the

need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
I.C., § 15-13-501, as added by 2011, ch. 36, § 1, p. 79.

15-13-502. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

History.
I.C., § 15-13-502, as added by 2011, ch. 36, § 1, p. 79.

15-13-503. [Reserved.]

15-13-504. Transitional provision. — (1) This chapter applies to guardianship and protective proceedings begun on or after July 1, 2011.

(2) Parts 1, 3 and 4 of this chapter and sections 15-13-501 and 15-13-502, Idaho Code, apply to proceedings begun before July 1, 2011, regardless of whether a guardianship or protective order has been issued.

History.
I.C., § 15-13-504, as added by 2011, ch. 36, § 1, p. 79.

OFFICIAL COMMENT

This Act applies retroactively to guardianships and conservatorships in existence on the effective date. The guardian or conservator appointed prior to the effective date of the Act may petition to transfer the proceeding to another state under Article [Part] 3 and register and enforce the order in other states pursuant to Article [Part] 4. The jurisdictional provisions of Article [Part] 2 also apply to proceedings begun on or after the effective date. What the Act does not do is change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made or order issued as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the Act affect the validity of already existing appointments even though the court might not have had jurisdiction had this Act been in effect at the time the appointment was made.

TITLE 16

JUVENILE PROCEEDINGS

CHAPTER.
15. Adoption of Children, §§ 16-1501, 16-1504, 16-1512, 16-1513.
16. Child Protective Act, §§ 16-1602, 16-1610, 16-1614, 16-1619 — 16-1625, 16-1628, 16-1629, 16-1633.
20. Termination of Parent and Child Relationship, §§ 16-2002, 16-2005, 16-2007, 16-2008, 16-2014.
24. Children's Mental Health Services, § 16-2411.

CHAPTER 15

ADOPTION OF CHILDREN

SECTION.
16-1501. Minors and adults may be adopted.
16-1504. Necessary consent to adoption.
16-1512. Appeal from order — Binding effect of adoption order.
16-1513. Registration of notice and filing of paternity proceedings.

16-1501. Minors and adults may be adopted. — Any minor child may be adopted by any adult person residing in and having residence in Idaho, in the cases and subject to the rules prescribed in this chapter.

(1) Persons not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person:

(a) For a period in excess of one (1) year while the person was a minor; or

(b) For such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

(2) Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent.

(a) "Adaptive equipment," for purposes of this chapter, means any piece of equipment or any item that is used to increase, maintain, or improve the parenting capabilities of a parent with a disability.

(b) "Disability," for purposes of this chapter, means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services," as used in this chapter, means services which assist a parent with a disability to compensate for those aspects of their

disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

(3) If applicable, nothing in this chapter shall modify the requirements of the Indian child welfare act of 1978, 25 U.S.C. section 1902 [1901], et seq.

History.
1879, p. 8, § 1; R.S., § 2545; reen. R.C. & C.L., § 2700; C.S., § 4682; I.C.A., § 31-1101; am. 1951, ch. 283, § 1, p. 611; am. 1953, ch. 150, § 1, p. 245; am. 1972, ch. 147, § 1, p. 318; am. 1991, ch. 39, § 1, p. 78; am. 1996, ch. 195, § 1, p. 610; am. 2002, ch. 233, § 4, p. 666; am. 2013, ch. 138, § 3, p. 323.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 138, added subsection (3).

Compiler's Notes.
The bracketed insertion in subsection (3) was added by the compiler to correct the federal reference.

RESEARCH REFERENCES

A.L.R. — Adoption of child by same-sex partners. 61 A.L.R.6th 1.

16-1504. Necessary consent to adoption. — (1) Consent to adoption is required from:

(a) The adoptee, if he is more than twelve (12) years of age, unless he does not have the mental capacity to consent;

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is eighteen (18) years of age or older;

(c) The mother of an adoptee born outside of marriage;

(d) Any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (2)(a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The guardian or conservator of an incapacitated adult, if one has been appointed;

(h) The adoptee's spouse, if any;

(i) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(j) The father of an illegitimate child who has adopted the child by acknowledgment.

(2) In accordance with subsection (1) of this section, the consent of an

unmarried biological father is necessary only if the father has strictly complied with all requirements of this section.

(a)(i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Have regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet any one (1) or more of the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met all of the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection and prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The father shall have strictly complied with all of the requirements of this subsection by:

(i) Filing proceedings to establish paternity under section 7-1111, Idaho Code, and filing with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) Filing a notice of the proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the

mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under subsection (1) or (2) of this section may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of the termination of parent and child relationship act, sections 16-2001 through 16-2015, Idaho Code, that his rights should be terminated, based on the petition of any party as set forth in section 16-2004, Idaho Code.

(4) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers, of a child born out of wedlock, and that the putative father involved has not filed notice of the proceedings to establish his paternity, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entrance of the final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, or for termination of parental rights and his consent to the adoption of the child is not required unless he proves, by clear and convincing evidence, all of the following:

(a) It was not possible for him, prior to the filing of a proceeding to terminate parental rights of the birth mother to:

(i) Commence proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code; and

(ii) File notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code;

(b) His failure to timely file notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and his failure to commence timely proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, was through no fault of his own; and

(c) He filed notice of the filing of proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and filed proceedings to establish his paternity of the child within ten (10) days after the birth of the child. Lack of knowledge of the pregnancy is not an acceptable reason for his failure to timely file notice of the commencement of proceedings or for his failure to commence timely proceedings.

(6) A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

(7) No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16, Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(8) The legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore, when all of the following requirements have been met, that unmarried biological father may contest an adoption prior to finalization of the decree of adoption and assert his interest in the child:

(a) The unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) The mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Idaho;

(c) The unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Idaho; and

(d) The unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located in order to protect and preserve his parental interest and rights in the child in cases of adoption.

(9) An unmarried biological father may, under the provisions of section 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the birth of the child; however, such paternity proceeding must be filed prior to the date of the filing of any proceeding to terminate parental rights of the birth mother.

History.

1879, p. 8, § 4; R.S., § 2548; reen. R.C. & C.L., § 2703; C.S., § 4685; I.C.A., § 31-1104; am. 1957, ch. 189, § 1, p. 376; am. 1961, ch. 225, § 1, p. 361; am. 1969, ch. 188, § 1, p. 554; am. 1970, ch. 101, § 1, p. 253; am. 1990, ch. 27, § 1, p. 41; am. 1994, ch. 393, § 1, p. 1243; am. 1996, ch. 195, § 2, p. 610; am. 2000, ch. 171, § 2, p. 422; am. 2002, ch. 233, § 6, p. 666; am. 2013, ch. 138, § 4, p. 323.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 138, substituted "all requirements" for "the requirements" in the introductory paragraph of subsection (2); inserted "any one (1) or more of" in paragraph (2)(a)(ii); inserted "all of" near the end of paragraph (2)(a)(iii); substituted "subsection and prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The father shall

have strictly complied with all of the requirements of this subsection by" for "subsection prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first. The father shall" in the introductory paragraph of paragraph (2)(b); in paragraph (2)(b)(i), substituted "Filing proceedings" for "Commence proceedings"; in paragraph (2)(b)(ii), substituted "a notice of the proceedings" for "a notice of his commencement of proceedings"; in subsection (4), in the first sentence, added "In any adoption proceeding pertaining to a child born out of wedlock" at the beginning and substituted "filed notice of the proceedings" for "filed notice of his commencement of proceedings" near the end; rewrote subsection (5), which formerly read: "An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required"; and rewrote subsection (9), which formerly read: "Notwithstanding section 7-1107, Idaho Code, a proceeding to establish paternity filed pursuant to this section may be filed prior to the birth of the child."

JUDICIAL DECISIONS

ANALYSIS

Consent of agency.
Substantial relationship.

Consent of Agency.

Summary judgment was properly awarded to the Idaho department of health and welfare on grandparents' petition to adopt a child because the grandparents could not adopt the child without written consent from the department regardless of what facts they presented; the department had stated that it would not consent to the adoption. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 150 Idaho 491, 248 P.3d 742 (2011).

Substantial Relationship.

Biological father was not a "parent" under § 16-2002 and had no parental rights to the child; substantial and competent evidence supported the magistrate court's findings that the father failed to meet the requirements of subdivision (2)(a) of this section, as he had not developed a substantial relationship with the child and never took any of the steps available to establish himself as the child's parent. Dep't of Health & Welfare, v. Doe (In the Interest of Doe), 150 Idaho 88, 244 P.3d 232 (2010) (see 2013 amendment).

RESEARCH REFERENCES

A.L.R. — Requirements and effects of putative father registries. 28 A.L.R.6th 349.

16-1506. Proceedings on adoption.

JUDICIAL DECISIONS

Consent.

Summary judgment was properly awarded to the Idaho department of health and welfare on grandparents' petition to adopt a child because the grandparents could not adopt the child without written consent from the department regardless of what facts they presented; the department had stated that it would not consent to the adoption. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 150 Idaho 491, 248 P.3d 742 (2011).

16-1512. Appeal from order — Binding effect of adoption order. — (1) Any appeal from an order granting or refusing to grant an order of adoption shall be taken to the supreme court.

(2) After the order of adoption by the court becomes final, no party to an adoption proceeding, nor anyone claiming under such party, may later

question the validity of the adoption proceedings by reason of any defect or irregularity therein, jurisdiction or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed in subsection (1) of this section. In no event, for any reason, other than fraud on the part of the party adopting a child, shall an adoption be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date the order of adoption becomes final. This provision is intended as a statute of repose.

History.
I.C.A., § 16-1512, as added by 1957, ch. 189, § 2, p. 376; am. 1971, ch. 170, § 1, p. 805; am. 2000, ch. 173, § 1, p. 441; am. 2010, ch. 26, § 1, p. 46.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 26, in the section heading, deleted "to district court" following "Appeal from order"; and rewrote subsection (1), which formerly read: "An appeal may be taken to the district court of the county from an order of the magistrates division of the district court granting or refusing to grant an order of adoption or from any other intermediate order in adoption proceedings".

16-1513. Registration of notice and filing of paternity proceedings. — (1) A person who is the father or claims to be the father of a child born out of wedlock may claim rights pertaining to his paternity of the child by commencing proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare notice of his filing of proceedings to establish his paternity of the child born out of wedlock. The vital statistics unit of the department of health and welfare shall provide forms for the purpose of filing the notice of filing of paternity proceedings, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. The forms shall include a written notification that filing pursuant to this section shall not satisfy the requirements of chapter 82, title 39, Idaho Code, and the notification shall also include the following statements:

(a) A parent may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, as provided by section 39-8206, Idaho Code, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare on a form as prescribed and provided by the vital statistics unit of the department of health and welfare;

(b) The vital statistics unit of the department of health and welfare shall maintain a separate registry for claims to abandoned children, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code;

(c) The department shall provide forms for the purpose of filing a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state;

(d) To be valid, a claim of parental rights of an abandoned child,

abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child;

(e) Registration of notice of filing of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of chapter 82, title 39, Idaho Code. To register a parental claim to an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, an individual must file an abandoned child registry claim with the vital statistics unit of the department of health and welfare and comply with all other provisions of chapter 82, title 39, Idaho Code, in the time and manner prescribed, in order to preserve parental rights to the child.

When filing a notice of the filing of paternity proceedings, a person who claims to be the father of a child born out of wedlock shall file with the vital statistics unit of the department of health and welfare the completed form prescribed by the vital statistics unit of the department of health and welfare. Said form will be filled out completely, signed by the person claiming paternity, and witnessed before a notary public.

(2) The notice of the filing of paternity proceedings may be filed prior to the birth of the child, but must be filed prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The notice of the filing of paternity proceedings shall be signed by the person filing the notice and shall include his name and address, the name and last address of the mother, and either the birth date of the child or the probable month and year of the expected birth of the child. The vital statistics unit of the department of health and welfare shall maintain a central registry for this purpose that shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall record the date and time the notice of the filing of proceedings is filed with the department. The notice shall be deemed to be duly filed with the department as of the date and time recorded on the notice by the department.

(3) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in venue.

(4) Except as provided in section 16-1504(5), Idaho Code, any father of a child born out of wedlock who fails to file and register his notice of the commencement of paternity proceedings pursuant to section 7-1111, Idaho Code, prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother, is deemed to have waived and surrendered any right in relation to the child and of any notice to proceedings for adoption of the child or for termination of parental rights of the birth mother. His consent to the adoption of the child shall not be required and he shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing or registration shall

constitute an abandonment of said child and shall constitute an irrevocable implied consent in any adoption or termination proceeding.

(5) The filing and registration of an unrevoked notice of the commencement of paternity proceedings by a putative father shall constitute prima facie evidence of the fact of his paternity in any contested proceeding under chapter 11, title 7, Idaho Code. The filing of a notice of the commencement of paternity proceedings shall not be a bar to an action for termination of his parental rights under chapter 20, title 16, Idaho Code.

(6) An unmarried biological father of a child born out of wedlock who has filed and registered a notice of the filing of paternity proceedings may at any time revoke notice of intent to claim paternity previously filed. Upon receipt of written revocation, the effect shall be as if no notice of the filing of paternity proceedings had been filed or registered.

(7) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that the putative father has consented to the adoption, a certificate shall be obtained from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of notices from putative fathers, and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entry of a final decree of adoption.

(8) Identities of putative fathers can only be released pursuant to procedures contained in chapter 3, title 9, Idaho Code.

(9) To cover the cost of implementing and maintaining said central registry, the vital statistics unit of the department of health and welfare shall charge a filing fee of ten dollars ($10.00) at the time the putative father files his notice of his commencement of proceedings. The department shall also charge a reasonable fee to cover all costs incurred in a search of the Idaho putative father registry and for furnishing a certificate in accordance with the provisions of this section and section 16-1504, Idaho Code. It is the intent of the legislature that the fee shall cover all direct and indirect costs incurred pursuant to this section and section 16-1504, Idaho Code. The department shall annually review the fees and expenses incurred pursuant to administering the provisions of this section and section 16-1504, Idaho Code.

(10) Consistent with its authority denoted in the vital statistics act, section 39-242(c), Idaho Code, the board of health and welfare shall adopt, amend and repeal rules for the purpose of carrying out the provisions of this section.

(11) The department shall produce and distribute, within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, a pamphlet or publication informing the public about the Idaho putative father registry, printed in English and Spanish. The pamphlet shall indicate the procedures to be followed in order to receive notice of any proceeding for adoption of a child an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the

consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry. Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, such pamphlets or publications shall be made available for distribution to the public at all offices of the department of health and welfare. Upon request the department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, colleges, universities, providers of child-related services and children's agencies licensed in the state of Idaho or advertising services in the state of Idaho.

(12) Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, each county clerk, branch office of the department of motor vehicles, all offices of the department of health and welfare, hospitals and local health districts shall post in a conspicuous place a notice that informs the public about the purpose and operation of the Idaho putative father registry. The notice must include information regarding the following:

(a) Where to obtain a registration form;

(b) Where to register;

(c) The procedures to follow in order to file proceedings to establish paternity of a child born out of wedlock;

(d) The consequences of a voluntary acknowledgment of paternity; and

(e) The consequences of failure to acknowledge paternity.

(13) The department shall host on the department's web page a public service announcement (PSA) informing the public about the Idaho putative father registry, printed in English and Spanish. The PSA shall indicate the procedures to be followed in order to receive notice of any proceeding for adoption of a child an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry.

(14) Failure to post a proper notice under the provisions of this section does not relieve a putative father of the obligation to file notice of the filing of proceedings to establish his paternity pursuant to this section or to commence proceedings to establish paternity pursuant to section 7-1111, Idaho Code, prior to the filing of any proceeding to terminate parental rights of the birth mother.

(15) A person who knowingly or intentionally falsely files or registers as a putative father is guilty of a misdemeanor.

History.

I.C., § 16-1513, as added by 1985, ch. 54, § 7, p. 106; am. 1990, ch. 213, § 9, p. 15; am. 1992, ch. 341, § 2, p. 1031; am. 1994, ch. 393, § 3, p. 1243; am. 2000, ch. 171, § 7, p. 422; am. 2001, ch. 357, § 2, p. 1252; am. and redesig. 2005, ch. 25, § 75, p. 82; am. 2005, ch. 391, § 4, p. 1263; am. 2013, ch. 138, § 5, p. 323.

STATUTORY NOTES

Cross References.

State registrar of vital statistics, § 39-243.
Vital statistics unit, § 39-242.

Amendments.

The 2013 amendment, by ch. 138, rewrote the section, substituting references to the filing of paternity proceedings for references to the commencement of paternity proceedings in the section heading and throughout the section and adding subsections (6) and (11) through (15).

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

A.L.R. — Requirements and effects of putative father registries. 28 A.L.R.6th 349.

CHAPTER 16

CHILD PROTECTIVE ACT

SECTION.
16-1602. Definitions.
16-1610. Petition.
16-1614. Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child.
16-1619. Adjudicatory hearing — Conduct of hearing — Consolidation.
16-1620. Finding of aggravated circumstances — Permanency plan — Hearing.
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SECTION.
16-1622. Review hearings — Annual permanency hearings.
16-1623. Amended disposition — Removal during protective supervision.
16-1624. Termination of parent-child relationship.
16-1625. Appeal — Effect on custody.
16-1628. Support of committed child.
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16-1633. Guardian ad litem — Duties.

16-1602. Definitions. — For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency.

(5) "Aggravated circumstances" include, but are not limited to:

(a) Circumstances in which the parent has engaged in any of the following:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate that return of the child to the home would result in unacceptable risk to the health and welfare of the child.

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code.

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(b) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The parental rights of the parent to another child have been terminated involuntarily.

(6) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(7) "Case plan hearing" means a hearing to approve, modify or reject the case plan as provided in section 16-1621, Idaho Code.

(8) "Child" means an individual who is under the age of eighteen (18) years.

(9) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(10) "Commit" means to transfer legal and physical custody.

(11) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(12) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(13) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(14) "Department" means the department of health and welfare and its authorized representatives.

(15) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activity of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(16) "Family or household member" shall have the same meaning as in section 39-6303(6), Idaho Code.

(17) "Foster care" means twenty-four (24) hour substitute parental care for children placed away from their parents or guardians by persons who may or may not be related to the children and for whom the state agency has placement and care responsibility.

(18) "Grant administrator" means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(19) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(20) "Guardian ad litem coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(21) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(22) "Homeless," as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(23) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(24) "Legal custody" means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(b) To supply the child with food, clothing, shelter and incidental necessities.

(c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and

treatment in a facility with a program of services for children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(25) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(26) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(27) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(28) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(29) "Protective order" means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an order shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39, Idaho Code. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

(30) "Protective supervision" is a legal status created by court order in a child protective case whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s), subject to supervision by the department.

(31) "Relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(32) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the

right to family counseling when beneficial, and the responsibility for support.

(33) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(34) "Supportive services," as used in this chapter, shall mean services which assist parents with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

History.

I.C., § 16-1602, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 2, p. 491; am. 1986, ch. 84, § 5, p. 243; am. 1989, ch. 281, § 1, p. 684; am. 1989, ch. 302, § 1, p. 752; am. 1991, ch. 38, § 1, p. 76; am. 1991, ch. 212, § 2, p. 500; am. 1996, ch. 272, § 2, p. 884; am. 2000, ch. 136, § 3, p. 355; am. 2001, ch. 107, § 2, p. 350; am. 2003, ch. 279, § 2, p. 748; am. 2005, ch. 391, § 5, p. 1263; am. 2007, ch. 26, § 1, p. 48; am. 2009, ch. 103, § 1, p. 316; am. 2010, ch. 147, § 1, p. 314; am. 2013, ch. 287, § 1, p. 741.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 147, in subsection (16), inserted "parental" and "by persons who may or may not be related to the children"; and added subsection (30) and redesignated the subsequent subsections accordingly.

The 2013 amendment, by ch. 287, deleted former paragraph (4)(c) which read: "Whether aggravated circumstances as defined in section 16-1619, Idaho Code, exist"; and added subsection (5), redesignating subsequent subsections accordingly; in subsection (7), substituted "approve, modify or reject the case plan as provided in section 16-1621, Idaho Code" for former paragraphs which read: "(a) Review, approve, modify or reject the case plan; and (b) Review reasonable efforts being made to rehabilitate the family; and (c) Review reasonable efforts being made to reunify the children with a parent or guardian" and rewriting present subsection (29), which formerly read: "'Protective order' means an order created by the court granting relief as delineated in section 39-6306, Idaho Code, and shall be for a period not to exceed three (3) months unless otherwise stated herein. Failure to comply with the order shall be a misdemeanor"; and rewriting present subsection (30), which formerly read: "'Protective supervision' means a legal status created by court order in neglect and abuse cases whereby the child is permitted to remain in his home under supervision by the department."

Compiler's Notes.

The letter "s" enclosed in parentheses in subsection (30) so appears in the law as enacted.

JUDICIAL DECISIONS

Analysis

Abused.
Custodian.
Neglected.
Protective supervision.

Abused.

Magistrate erred in finding that, in not specifically using the word "abuse," the state did not allege abuse as a ground for termination under § 16-2005(1)(b), when the language used by the state in describing the second ground for termination was almost identical to the definition of abused under subdivision (1)(a) of this section. Idaho Dep't of Health & Wealth v. Doe (In re Doe), 149 Idaho 653, 239 P.3d 451 (Ct. App. 2010).

Although the parents provided an explana-

tion for the older child's injuries, the magistrate was free to determine that the parents' explanation did not justifiably explain the child's injuries in light of the testimony regarding her injuries and the photographic evidence depicting them. Thus, there was sufficient evidence presented allowing the magistrate to find that the child was abused and within the court's jurisdiction. Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010).

Custodian.

Summary judgment was properly awarded to the Idaho department of health and welfare on grandparents' petition to adopt a child because the grandparents could not adopt the child without written consent from the department regardless of what facts they presented; the department, as the child's custodian, had stated that it would not consent to the adoption. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 150 Idaho 491, 248 P.3d 742 (2011).

Neglected.

Where children were without proper parental care even when they would spend time with their parents, as the parents were unable to appropriately discharge their responsibilities as parents, evidenced by the lack of supervision over the children, the health, safety and well-being of the children were at risk, meeting the definition of "neglected" in this section. In re Termination of Doe v. Doe (In re Termination of Doe), 147 Idaho 353, 209 P.3d 650 (2009).

Under §§ 16-2002 and 16-1629 and this section, termination of parental rights was in the best interests of the children, based on the parents' history, and ongoing use, of controlled substances, which resulted in neglect of the children who were in foster care for seventeen out of twenty-two months. Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 474, 235 P.3d 1195 (2010).

Mother's failure to stop using methamphetamine, her continued association with known drug users, her continuing lack of employment, and her failure to comply with her case plan were sufficient evidence supporting the finding that she had neglected the child, as defined this section. In re Doe 2009-19, 150 Idaho 201, 245 P.3d 953 (2010).

Trial court did not err in terminating a father's parental rights because there was substantial evidence that he neglected his children. After his release from prison, he failed to establish suitable living arrangements, failed to obtain adequate employment, and was convicted of driving without privileges. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

In terminating a father's parental rights, evidence of his failure to comply with his case plan was properly considered as a basis for neglect. Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011).

Because subdivisions (25) [now (26)] (a) and (b) of this section are written in the disjunctive, there is no requirement that a magistrate court consider the statutory timeframe in § 16-1629(9) when it is making a finding of neglect based on subdivision (25)(a) [now (26)(a)] of this section. Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011).

Termination of mother's parental rights by a finding that she neglected her children was justified where she neither completed the drug treatment programs mandated by her case plan, nor did she timely seek help with her anger management, also as required by the case plan. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 151 Idaho 846, 264 P.3d 953 (2011).

Trial court did not err in terminating a father's parental rights under paragraph (25)(a) [now (26)(a)], because he neglected his child by conduct or omission, which caused the child to be without proper parental care and control, subsistence, medical, or other care or control. The father had not expressed a genuine interest in learning about the child's special needs, let alone how to care for those needs on a daily basis. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 644, 273 P.3d 685 (2012).

In a termination of parental rights case, the magistrate court found that appellant mother neglected her children, because they were without proper parental care and control, proper subsistence, and the medical and other care necessary for their well-being. In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

Protective Supervision.

Magistrate court correctly took custody of two children under § 16-1603, where the son was abused by the father and the daughter lived in the same home and witnessed the father's actions. However, the court improperly retained legal custody of the children after returning physical custody to the mother; protective supervision provided an adequate safeguard where there was no evidence that the mother was unfit. Doe v. Doe, 151 Idaho 300, 256 P.3d 708 (2011).

Cited in: In re Doe, 148 Idaho 124, 219 P.3d 448 (2009); Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 401, 234 P.3d 725 (2010); Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 752, 250 P.3d 803 (Ct. App. 2011); Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 953, 277 P.3d 400 (Ct. App. 2012).

16-1603. Jurisdiction of the courts.

JUDICIAL DECISIONS

Protective Supervision.

Magistrate court correctly took custody of two children under § 16-1603, where the son was abused by the father and the daughter lived in the same home and witnessed the father's actions. However, the court improperly retained legal custody of the children after returning physical custody to the mother; protective supervision provided an adequate safeguard where there was no evidence that the mother was unfit. Doe v. Doe, 151 Idaho 300, 256 P.3d 708 (2011).

Cited in: Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010); In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

16-1604. Retention of jurisdiction.

JUDICIAL DECISIONS

Conflicting Orders.

Magistrate's decision to award custody of child to the department of health and welfare does not conflict with an earlier order granting "father" legal custody to child after father and mother separated, as the father was allowed to participate in the termination proceedings fully, including presentation of evidence relating to his status as parent, as well as relating to the merits of the termination claims. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 195, 245 P.3d 506 (Ct. App. 2010).

16-1606. Immunity.

JUDICIAL DECISIONS

Analysis

Bad faith or malice.
Summary judgment.
—Damages.
——Excessive or inadequate.

Bad Faith or Malice.

The question of whether a person makes a report or allegation of child abuse knowing it to be false or reports in bad faith or with malice is to be tried to a court rather than a jury. Davidson v. Davidson, 150 Idaho 455, 248 P.3d 242 (Ct. App. 2011).

Summary Judgment.

—Damages.

——Excessive or Inadequate.

The traditional summary judgment standard applies in the context of liability of persons reporting instances of suspected child abuse. Thus, where the substance of some of the allegations of child abuse to the department, as well as the timing of those reports, raises genuine issues of material fact regarding the reporter's motivation, summary judgment should not be granted. Davidson v. Davidson, 150 Idaho 455, 248 P.3d 242 (Ct. App. 2011).

16-1608. Emergency removal.

JUDICIAL DECISIONS

Hearing.

Magistrate's failure to hold a timely shelter care hearing and adjudicatory hearing and the department of health and welfare's failure to timely disclose its investigation report were not jurisdictional issues that could be raised for the first time on appeal, did not require reversal of the magistrate's subsequent actions, and did not operate to divest the magistrate of subject matter jurisdiction under

this chapter. Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010).

16-1610. Petition. — (1) A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

(a) A petition must be signed by the prosecutor or deputy attorney general before being filed with the court.

(b) Any person or governmental body of this state having evidence of abuse, abandonment, neglect or homelessness of a child may request the attorney general or prosecuting attorney to file a petition. The prosecuting attorney or the attorney general may file a petition on behalf of any child whose parent, guardian, or custodian has been accused in a criminal complaint of the crime of cruel treatment or neglect as defined in section 18-1501, Idaho Code.

(2) Petitions shall be entitled "In the Matter of ....., a child under the age of eighteen (18) years" and shall be verified and set forth with specificity:

(a) The facts which bring the child within the jurisdiction of the court upon the grounds set forth in section 16-1603, Idaho Code, with the actions of each parent described therein;

(b) The name, birth date, sex, and residence address of the child;

(c) The name, birth date, sex, and residence address of all other children living at or having custodial visitation at the home where the injury to the subject child occurred;

(d) The names and residence addresses of both the mother and father, guardian or other custodian. If neither of his parents, guardian or other custodian resides or can be found within the state, or if their residence addresses are unknown, the name of any known adult relative residing within the state;

(e) The names and residence addresses of each person having sole or joint legal custody of the children described in this section;

(f) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section;

(g) Whether the child is in shelter care, and, if so, the type and nature of the shelter care, the circumstances necessitating such care and the date and time he was placed in such care;

(h) When any of the facts required by this section cannot be determined, the petition shall so state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief;

(i) If the child has been or will be removed from the home, the petition shall state that:

(i) Remaining in the home was contrary to the welfare of the child;

(ii) Vesting legal custody of the child in the department or other authorized agency is in the best interests of the child; and

(iii) Reasonable efforts have been made prior to the placement of the child in care to prevent the removal of the child from his home or, if such

efforts were not provided, that reasonable efforts to prevent placement were not required because aggravated circumstances were found;

(j) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement;

(k) The petition shall state whether a court has adjudicated the custodial rights of the parents and shall set forth the custodial status of the child;

(*l*) The court may combine petitions and hearings where multiple petitions have been filed involving related children, parents or guardians.

History.

I.C., § 16-1605, as added by 1976, ch. 204, § 2, p. 732; am. 1977, ch. 304, § 1, p. 852; am. 1982, ch. 186, § 5, p. 491; am. 1986, ch. 121, § 1, p. 319; am. 1996, ch. 272, § 4, p. 884; am. 1998, ch. 257, § 2, p. 850; am. 2001, ch. 107, § 5, p. 350; am. and redesig. 2005, ch. 391, § 12, p. 1263; am. 2013, ch. 287, § 2, p. 741.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 287, substituted "were not required because aggravated circumstances were found" for "were not required as the parent subjected the child to aggravated circumstances" at the end of paragraph (2)(a)(i)(iii).

RESEARCH REFERENCES

A.L.R. — Construction and application by state courts of the Federal Adoption and Safe Families Act and its implementing state statutes. 10 A.L.R.6th 173.

16-1614. Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child. — (1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.

(2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:

(a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or

(b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

History.

I.C., § 16-1618, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 17, p. 491; am. 1985, ch. 177, § 1, p. 459; am. 1989, ch. 281, § 2, p. 684; am. 2001, ch. 107, § 18, p. 350; am. and redesig. 2005, ch. 391, § 16, p. 1263; am. 2013, ch. 221, § 1, p. 521.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 221, rewrote the section providing that an attorney may not serve as an attorney and a guardian ad litem for a child in the same case and providing specific representation of children involved in child protection actions.

16-1615. Shelter care hearing.

JUDICIAL DECISIONS

Cited in: Doe v. Doe, 151 Idaho 300, 256 P.3d 708 (2011).

16-1616. Investigation.

JUDICIAL DECISIONS

Report.

Magistrate's failure to hold a timely shelter care hearing and adjudicatory hearing and the department of health and welfare's failure to timely disclose its investigation report were not jurisdictional issues that could be raised for the first time on appeal, did not require reversal of the magistrate's subsequent actions, and did not operate to divest the magistrate of subject matter jurisdiction under this chapter. Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010).

16-1619. Adjudicatory hearing — Conduct of hearing — Consolidation. — (1) When a petition has been filed, the court shall set an adjudicatory hearing to be held no later than thirty (30) days after the filing of the petition.

(2) A pretrial conference shall be held outside the presence of the court within three (3) to five (5) days before the adjudicatory hearing. Investigative reports required under section 16-1616, Idaho Code, shall be delivered to the court with copies to each of the parents and other legal custodians, guardian ad litem and attorney for the child prior to the pretrial conference.

(3) At the adjudicatory hearing, parents or guardians with disabilities shall have the right to introduce admissible evidence regarding how use of adaptive equipment or supportive services may enable the parent or guardian to carry out the responsibilities of parenting the child by addressing the reason for the removal of the child.

(4) If a preponderance of the evidence at the adjudicatory hearing shows that the child comes within the court's jurisdiction under this chapter upon the grounds set forth in section 16-1603, Idaho Code, the court shall so decree and in its decree shall make a finding on the record of the facts and conclusions of law upon which it exercises jurisdiction over the child.

(5) Upon entering its decree the court shall consider any information relevant to the disposition of the child but in any event shall:

(a) Place the child under the protective supervision of the department for an indeterminate period not to exceed the child's eighteenth birthday; or

(b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court of all matters relating to the custody of the child by the department or other authorized agency.

(6) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record, that, in addition to the findings required in subsection (4) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In addition the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

(a) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;

(b) The department made reasonable efforts to prevent removal but was not able to safely provide preventive services;

(c) Reasonable efforts to temporarily place the child with related persons were made but were not successful; or

(d) Reasonable efforts to reunify the child with one (1) or both parents were not required because aggravated circumstances were present. If aggravated circumstances are found, a permanency hearing for the child shall be held within thirty (30) days of the determination of aggravated circumstances.

(7) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday.

(8) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday, and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.

(9) In order to preserve the unity of the family system and to ensure the best interests of the child whether issuing an order of protective supervision or an order of legal custody, the court may consider extending or initiating a protective order as part of the decree. The protective order shall be determined as in the best interests of the child and upon a showing of continuing danger to the child. The conditions and terms of the protective order shall be clearly stated in the decree.

(10) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (4) of this section it shall dismiss the petition.

History.

I.C., § 16-1608, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 8, p. 491; am. 1988, ch. 280, § 1, p. 911; am. 1989, ch. 377, § 1, p. 946; am. 2001, ch. 107, § 8, p. 350; am. 2003, ch. 279, § 4, p. 748; am. and redesig.

2005, ch. 391, § 21, p. 1263; am. 2007, ch. 223, § 3, p. 669; am. 2010, ch. 216, § 1, p. 483; am. 2013, ch. 287, § 3, p. 741.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 216, near the middle of paragraph (6)(d), inserted "or an injury to a child" and "or great."

The 2013 amendment, by ch. 287, substituted "of the department" for "in his own home" in paragraph (5)(a) and rewrote paragraph (6)(d), which formerly read: "Reasonable efforts were not required as the parent had subjected the child to aggravated circumstances as determined by the court including, but not limited to: abandonment; torture; chronic abuse; sexual abuse; committed murder; committed voluntary manslaughter of another child; aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; committed a battery or an injury to a child that results in serious or great bodily injury to a child; or the parental rights of the parent to a sibling of the child have been terminated involuntarily and that as a result, a hearing to determine the permanent future plan for this child will be held within thirty (30) days of this determination."

JUDICIAL DECISIONS

Analysis

Determination of remedy.
Jurisdiction.

Determination of Remedy.

Magistrate court correctly took custody of two children under § 16-1603, where the son was abused by the father and the daughter lived in the same home and witnessed the father's actions. However, the court improperly retained legal custody of the children after returning physical custody to the mother; protective supervision provided an adequate safeguard where there was no evidence that the mother was unfit. Doe v. Doe, 151 Idaho 300, 256 P.3d 708 (2011).

Jurisdiction.

Magistrate's failure to hold a timely shelter care hearing and adjudicatory hearing and the department of health and welfare's failure to timely disclose its investigation report were not jurisdictional issues that could be raised for the first time on appeal, did not require reversal of the magistrate's subsequent actions, and did not operate to divest the magistrate of subject matter jurisdiction under this chapter. Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010).

Although the parents provided an explanation for the older child's injuries, the magistrate was free to determine that the parents' explanation did not justifiably explain the child's injuries in light of the testimony regarding her injuries and the photographic evidence depicting them. Thus, there was sufficient evidence presented allowing the magistrate to find that the child was abused and within the court's jurisdiction. Idaho Dep't of Health & Welfare v. Doe, 150 Idaho 103, 244 P.3d 247 (Ct. App. 2010).

Cited in: Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

16-1620. Finding of aggravated circumstances — Permanency plan — Hearing. — (1) After a judicial determination that reasonable efforts to return the child to his home are not required because aggravated circumstances were found to be present, the court shall hold a permanency hearing within thirty (30) days after the finding. The department shall prepare a permanency plan and file the permanency plan with the court at least five (5) days prior to the permanency hearing. If the permanency plan has a goal of termination of parental rights and adoption, the department shall file the petition to terminate as required in section 16-1624(2), Idaho Code. Copies of the permanency plan shall be delivered to the parents and

other legal guardians, prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(2) The permanency plan shall have a permanency goal of termination of parental rights and adoption, guardianship or another planned permanent living arrangement and shall set forth the reasonable efforts necessary to finalize the permanency goal.

(3) The permanency plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement;

(b) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(c) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest;

(d) Specifically identify the actions necessary to implement the recommended option;

(e) Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal;

(f) Consider the options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection; and

(g) In the case of a child who has attained the age of sixteen (16) years, identify the services needed to assist the child to make the transition from foster care to independent living.

(4) The court shall hold a permanency hearing to determine whether the best interest of the child is served by adopting, rejecting or modifying the permanency plan proposed by the department.

(5) Notice of the permanency hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents; provided however, that foster parents are not thereby made parties to the child protective act action.

(6) The permanency plan as approved by the court shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the permanency plan and finalizing the permanency goal.

(7) If the permanency goal is not termination of parental rights and adoption or guardianship, the court may approve a permanency plan with a permanency goal of another planned permanent living arrangement only upon written case-specific findings that specify why a more permanent plan is not in the best interest of the child.

(8) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition or other motion is filed in a child protection proceeding seeking a determination of the court that aggravated circumstances were present.

History.
I.C., § 16-1620, as added by 2005, ch. 391, § 22, p. 1263; am. 2013, ch. 287, § 4, p. 741.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 287, added "Finding of aggravated circumstances" in the section heading, rewrote subsections (1) through (3), and added subsections (4) through (8).

16-1621. Case plan hearing — No finding of aggravated circumstances. — (1) In every case in which the child is determined to be within the jurisdiction of the court, and there is no judicial determination that aggravated circumstances were present, the department shall prepare a written case plan, including cases in which the parent(s) is incarcerated. The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing. The case plan shall be filed with the court no later than five (5) days prior to the case plan hearing. Copies of the case plan shall be delivered to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child. The court shall hold a case plan hearing to determine whether the best interest of the child is served by adopting, rejecting or modifying the case plan proposed by the department.

(2) Notice of the case plan hearing shall be provided to the parents, and other legal guardians, the prosecuting attorney or deputing attorney general, guardian ad litem, attorney for the child, the department and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child protective act action.

(3) If the child is placed in the legal custody of the department, the case plan filed by the department shall set forth reasonable efforts that will be made to make it possible for the child to return home. The case plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement.

(b) Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.

(c) Include a goal of reunification and a plan for achieving that goal. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home without department supervision. The court may specifically identify issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The case plan shall state with specificity the role of the department toward each parent. When appropriate, the reunification plan

should identify terms for visitation, supervision of visitation and child support.

(d) Include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one (1) of the following: termination of parental rights and adoption, guardianship or another planned permanent living arrangement. The concurrent plan shall:

(i) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(ii) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest;

(iii) Specifically identify the actions necessary to implement the recommended option;

(iv) Specifically set forth a schedule for accomplishing the actions necessary to implement the concurrent permanency goal;

(v) Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection;

(vi) In the case of a child who has attained the age of sixteen (16) years, include the services needed to assist the child to make the transition from foster care to independent living; and

(vii) Identify further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child's significant connections.

(4) If the child has been placed under protective supervision of the department, the case plan, filed by the department, shall:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.

(b) Identify all issues that need to be addressed to allow the child to remain at home without department supervision. The court may specifically identify issues to be addressed by the plan. The case plan shall specifically identify the tasks to be completed by the department, the parents or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The plan shall state with specificity the role of the department toward each parent.

(5) The case plan, as approved by the court, shall be entered into the record as an order of the court. The order may include interim and final

deadlines for implementing the case plan and finalizing the permanency goal. The court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan. Unless the child has been placed under the protective supervision of the department, the court's order shall also require the department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.

History.

I.C., § 16-1610, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 10, p. 491; am. 1986, ch. 121, § 2, p. 319; am. 1989, ch. 218, § 2, p. 752; am. 1989, ch. 302, § 3, p. 527; am. 1991, ch. 212, § 4, p. 500; am. 1996, ch. 272, § 8, p. 884; am. 1998, ch. 257, § 3, p. 850; am. 1998, ch. 385, § 1, p. 1186; am. 2001, ch. 107, § 11, p. 350; am. 2003, ch. 279, § 6, p. 748; am. and redesig. 2005, ch. 391, § 23, p. 1263; am. 2013, ch. 287, § 5, p. 741.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 287, rewrote the section to the extent that a detailed comparison is impracticable.

JUDICIAL DECISIONS

Failure to Comply.

In a termination of parental rights case, substantial evidence supported the finding that appellant mother neglected her children by failing to comply with her case plan that had been prepared pursuant to this section to set forth reasonable efforts that would make it possible for the children to return to appellant's home. Appellant failed to maintain safe housing and employment as required by the case plan, did not demonstrate adequate parenting skills, and resisted her caseworkers' suggestions for improvement. In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

Cited in: In re Doe 2009-19, 150 Idaho 201, 245 P.3d 953 (2010); In re Doe, — Idaho —, 281 P.3d 95 (2012).

16-1622. Review hearings — Annual permanency hearings. — (1) Review hearing.

(a) A hearing for review of the child's case and permanency plan shall be held no later than six (6) months after entry of the court's order taking jurisdiction under this act and every six (6) months thereafter. The purpose of the review hearing is to determine:

(i) The safety of the child;

(ii) The continuing necessity for and appropriateness of the placement;

(iii) The extent of compliance with the case plan;

(iv) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; and

(v) When reasonable, to project a likely date by which the child may be safely returned to and maintained in the home or placed in another permanent placement.

(b) A motion for revocation or modification of an order issued under section 16-1619, Idaho Code, may be filed by the department or any party; provided that no motion may be filed by the respondents under this section within three (3) months of a prior hearing on care and placement of the child. Notice of a motion for review of a child's case shall be provided to the parents and other legal guardians, the prosecuting attorney or

deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents.

(c) If the motion filed under paragraph (b) of this subsection alleges that the child's best interests are no longer served by carrying out the order issued under section 16-1619, Idaho Code, or that the department or other authorized agency has failed to provide adequate care for the child, the court shall hold a hearing on the motion.

(d) The department or authorized agency may move the court at any time to vacate any order placing a child in its custody or under its protective supervision.

(2) Permanency plan and hearing.

(a) The permanency plan shall include a permanency goal. The permanency goal may be one (1) of the following: continued efforts at reunification, in the absence of a judicial determination of aggravated circumstances; or termination of parental rights and adoption, guardianship or another planned permanent living arrangement. Every permanency plan shall include the information set forth in section 16-1621(3)(a), Idaho Code. If the permanency plan has reunification as a permanency goal, the plan shall include information set forth in section 16-1621(3)(b), Idaho Code. If the permanency plan has a permanency goal other than reunification, the plan shall include the information set forth in section 16-1621(3)(c), Idaho Code. The court may approve a permanency plan which includes a primary goal and a concurrent goal.

(b) A permanency hearing shall be held no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter, whichever occurs first, and at least every twelve (12) months thereafter, so long as the court has jurisdiction over the child. The court shall approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency goal. A permanency hearing may be held at any time and may be combined with the review hearing required under subsection (1) of this section.

(c) The court shall make written case-specific findings whether the department made reasonable efforts to finalize the primary permanency goal in effect for the child. Lack of reasonable efforts to reunify may be a basis for an order approving a permanency plan with a permanency goal of reunification.

(d) Where the permanency goal is not reunification, the hearing shall include a review of the department's consideration of options for in-state and out-of-state placement of the child. In the case of a child in an out-of-state placement, the court shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child.

(e) In the case of a child who has attained the age of sixteen (16) years, the hearing shall include a determination of the services needed to assist the child to make the transition from foster care to independent living.

(f) The court may approve a primary permanency goal of another planned permanent living arrangement only upon written, case-specific findings that there are compelling reasons why a more permanent goal is not in the best interests of the child.

(g) If the child has been in the temporary or legal custody of the department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights, unless the court finds that:

(i) The child is placed permanently with a relative;

(ii) There are compelling reasons why termination of parental rights is not in the best interests of the child; or

(iii) The department has failed to provide reasonable efforts to reunify the child with his family.

(h) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a permanency plan is approved by the court and the permanency plan does not include a permanency goal of reunification.

History.

I.C., § 16-1611, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 11, p. 491; am. 1991, ch. 212, § 5, p. 500; am. 1996, ch. 272, § 9, p. 884; am. 2001, ch. 107, § 12, p. 350; am. and redesig. 2005, ch. 391, § 24, p. 1263; am. 2007, ch. 223, § 4, p. 669; am. 2013, ch. 287, § 6, p. 741.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 287, rewrote the section heading, which formerly read: "Review and permanency hearings," and rewrote the section to the extent that a detailed comparison is impracticable.

16-1623. Amended disposition — Removal during protective supervision. — (1) Where the child has been placed under the protective supervision of the department pursuant to section 16-1619, Idaho Code, the child may be removed from his or her home under the following circumstances:

(a) A peace officer may remove the child where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child; or

(b) The court has ordered, based upon facts presented to the court, that the child should be removed from his or her present conditions or surroundings because continuation in such conditions or surroundings would be contrary to the welfare of the child and vesting legal custody in the department or other authorized agency would be in the child's best interests.

(2) Upon removal, the child shall be taken to a place of shelter care.

(3) When a child under protective supervision is removed from his home, a hearing shall be held within forty-eight (48) hours of the child's removal from the home, except for Saturdays, Sundays and holidays. At the hearing, the court shall determine whether to vest legal custody in the department or other authorized agency pursuant to section 16-1619(5)(b), Idaho Code.

(4) In determining whether to vest legal custody in the department or other authorized agency, the court shall consider any information relevant to the redisposition of the child, and in any event shall make detailed written findings based upon facts in the record as required by section 16-1619(6), Idaho Code.

(5) An order vesting legal custody with the department or other authorized agency under this section shall be treated for all purposes as if such an order had been part of the court's original decree under section 16-1619, Idaho Code. The department shall prepare a written case plan and the court shall hold a case plan hearing within thirty (30) days pursuant to section 16-1621, Idaho Code.

(6) Each of the parents or legal guardians from whom the child was removed shall be given notice of the redisposition hearing in the same time and manner as required for notice of a shelter care hearing under section 16-1615(2) and (3), Idaho Code.

(7) The redisposition hearing may be continued for a reasonable time upon the request of the parties.

History.
I.C., § 16-1623, as added by 2005, ch. 391, § 25, p. 1623]; am. 2013, ch. 287, § 7, p. 741.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 287, inserted "except for Saturdays, Sundays and holidays" in subsection (3).

16-1624. Termination of parent-child relationship. — (1) If the child has been placed in the legal custody of the department or under its protective supervision pursuant to section 16-1619, Idaho Code, the department may petition the court for termination of the parent and child relationship in accordance with chapter 20, title 16, Idaho Code. A petition to terminate parental rights shall be filed in the child protective act case.

(2) A petition to terminate parental rights shall be filed within thirty (30) days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption.

(3) Unless there are compelling reasons it would not be in the best interest of the child, the department shall be required to file a petition to terminate parental rights within thirty (30) days of a judicial determination that an infant has been abandoned or that reasonable efforts are not required because aggravated circumstances were present.

(4) The department shall join as a party to the petition if such a petition to terminate is filed by another party; as well as to concurrently identify, recruit, process and approve a qualified family for adoption unless it is determined that such actions would not be in the best interest of the child, or the child is placed with a fit and willing relative.

(5) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(6) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court,

when a petition to terminate parental rights has been filed with regard to the child.

History.

I.C., § 16-1615, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 15, p. 491; am. 1989, ch. 218, § 3, p. 527; am. 1998, ch. 257, § 4, p. 850; am. 2000, ch. 233, § 1, p. 653; am. 2001, ch. 107, § 16, p. 350; am. 2003, ch. 279, § 7, p. 748; am. and redesig. 2005, ch. 391, § 26, p. 1263; am. 2010, ch. 147, § 2, p. 314; am. 2013, ch. 287, § 8, p. 741.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 147, inserted "fit and willing" near the end of the third sentence.

The 2013 amendment, by ch. 287, added the subsection designations; added the second sentence in subsection (1); added subsection (2); in subsection (3), substituted "thirty (30) days" for "sixty (60) days" and "because aggravated circumstances were present" for "because the parent has subjected the child to aggravated circumstances as determined by the court pursuant to section 16-1619(6)(d), Idaho Code"; deleted the former last sentence in subsection (5), which read: "A petition to terminate parental rights shall be filed in the child protective act case"; and added subsection (6).

JUDICIAL DECISIONS

Cited in: Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

16-1625. Appeal — Effect on custody. — (1) An aggrieved party may appeal the following orders or decrees of the court to the district court, or may seek a direct permissive appeal to the supreme court as provided by rules adopted by the supreme court:

(a) An adjudicatory decree entered pursuant to section 16-1619, Idaho Code;

(b) Any order subsequent to the adjudicatory decree that vests legal custody of the child in the department or other authorized agency;

(c) Any order subsequent to the adjudicatory decree that authorizes or mandates the department to cease reasonable efforts to make it possible to return the child to his home, including an order finding aggravated circumstances; or

(d) An order of dismissal.

(2) Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court.

History.
I.C., § 16-1617, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 16, p. 491; am. 2001, ch. 107, § 17, p. 350; am. and redesig. 2005, ch. 391, § 27, p. 1263; am. 2010, ch. 26, § 2, p. 46; am. 2013, ch. 287, § 9, p. 741.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 26, substituted "or may seek a direct permissive appeal to the supreme court as provided by rules adopted by the supreme court" for "within thirty (30) days of the filing of such order or decree" in the introductory language of subsection (1).

The 2013 amendment, by ch. 287, substituted "finding aggravated circumstances" for "finding that the parent subjected the child to aggravated circumstances as set forth in section 16-1619(6)(d), Idaho Code" at the end of paragraph (1)(c).

16-1628. Support of committed child. — (1) Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parent or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after an order of temporary custody, if any, or the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code.

(3) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

History.
I.C., § 16-1622, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 21, p. 491; am. 1986, ch. 222, § 8, p. 593; am. 1990, ch. 361, § 4, p. 973; am. 1998, ch. 292, § 3, p. 928; am. and redesig. 2005, ch. 391, § 30, p. 1263; am. 2012, ch. 257, § 2, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "guardian" following "due notice to the parent" near the beginning of the first sentence in subsection (1).

16-1629. Powers and duties of the department. — The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(1) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, or other diagnostic, treatment, or care

centers or facilities, children of whom it has been given custody. The department is to be governed by the standards found in chapter 12, title 39, Idaho Code.

(2) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department, upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(3) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information. Provided however, that the department shall not retain any information for this purpose relating to a child, or parent of a child, abandoned pursuant to chapter 82, title 39, Idaho Code.

(4) The department shall make periodic evaluation of all persons in its custody or under its protective supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court that has jurisdiction. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1622, Idaho Code.

(5) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(6) The department shall keep written records of investigations, evaluations, prognoses and all orders concerning disposition or treatment of every person over whom it has legal custody or under its protective supervision. Department records shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the exemptions from disclosure provided in chapter 3, title 9, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(7) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and

care of children formally or informally placed in the custody of the department or under its protective supervision under this chapter including, but not limited to:

(a) Department employees whose job duties are related to the child protective services system under this chapter shall first be trained as to their obligations under this chapter regarding the protection of children whose health and safety may be endangered. The curriculum shall include information regarding their legal duties, how to conduct their work in conformity with the requirements of this chapter, information regarding applicable federal and state laws with regard to the rights of the child, parent and others who may be under investigation under the child protective services system, and the applicable legal and constitutional parameters within which they are to conduct their work.

(b) Department employees whose job duties are related to the child protective services system shall advise the individual of the complaints or allegations made against the individual at the time of the initial contact, consistent with protecting the identity of the referent.

(8) The department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.

(9) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody or under its protective supervision at intervals of not to exceed six (6) months. The department shall file with the court at least five (5) days prior to the permanency hearing either under section 16-1622, Idaho Code, or, in the case of a finding of aggravated circumstances, section 16-1620, Idaho Code, the permanency plan and recommendations of the department.

(10) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of the home care.

(11) At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

(a) A fit and willing relative.

(b) A fit and willing nonrelative with a significant relationship with the child.

(c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.

History.

I.C., § 16-1623, as added by 1976, ch. 204, § 2, p. 732; am. 1982, ch. 186, § 22, p. 491; am. 1989, ch. 218, § 4, p. 527; am. 1990, ch. 213, § 10, p. 480; am. 1991, ch. 212, § 6, p. 500; am. 1996, ch. 272, § 14, p. 884; am. 1996, ch. 361, § 1, p. 1216; am. 1998, ch. 257, § 5, p. 850; am. 1999, ch. 30, § 8, p. 41; am. 2000, ch. 233, § 2, p. 653; am. 2001, ch. 93, § 1, p. 232; am. 2001, ch. 107, § 19, p. 350; am. 2001, ch. 358, § 1, p. 1261; am. and redesig. 2005, ch. 25, § 78, p. 82; am. 2005, ch. 332, § 1, p. 1041; am. and redesig. 2005, ch. 391, § 31, p. 1263; am. 2006, ch. 16, § 2, p. 42; am. 2007, ch. 223, § 5, p. 669; am. 2010, ch. 147, § 3, p. 314; am. 2013, ch. 287, § 10, p. 741.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 147, in the introductory paragraph in subsection (11), substituted "least restrictive environment" for "least disruptive environment" and "shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:" for "may consider, without limitation, placement of the child with related persons"; and added paragraphs (a) through (c).

The 2013 amendment, by ch. 287, in subsection (4), inserted "protective" preceding "supervision" in the first sentence and substituted "that has jurisdiction" for "which vested custody of the person with the department" at the end of the third sentence; inserted "or under its protective supervision" near the beginnings of subsections (6), (7), and (9); and deleted "There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interest of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative" from the end of subsection (9).

JUDICIAL DECISIONS

Analysis

Applicability.
Best interest of child.
Neglected child.
Placement decisions.
Presumptions.
Termination petition.

Applicability.

In terminating a father's parental rights, evidence of his failure to comply with his case plan was properly considered under § 16-2002(3)(a) as a basis for neglect, and the magistrate court did not have to make a finding as to the time requirements of this section. Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011).

Because § 16-1602(25)(a) and (b) are written in the disjunctive, there is no requirement that a magistrate court consider the statutory timeframe in subsection (9) of this section when it is making a finding of neglect based on § 16-1602(25)(a). Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011).

Best Interest of Child.

Under §§ 16-1602 and 16-2002 and this section, termination of parental rights was in the best interests of the children, based on the parents' history, and ongoing use, of controlled substances, which resulted in neglect of the children who were in foster care for seventeen out of twenty-two months. Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 474, 235 P.3d 1195 (2010) (see 2013 amendment).

Neglected Child.

Neglect may be properly found under § 16-2002(3)(b) where the mother was not reunified with her children for fifteen out of twenty-one months, while the state had spent over $80,000 on counseling, gas vouchers, rental assistance, and foster care and mother failed to maintain residential and financial stability. State v. Doe, 149 Idaho 409, 234 P.3d 733 (2010) (see 2013 amendment).

Termination of the mother's parental rights to her children was proper because the magistrate court specifically found neglect on the grounds that the mother and her husband had failed to comply with their case plan by

not: (1) providing Idaho department of health and welfare with a schedule of household chores, (2) completing a food safety course, (3) cooperating with visits from the department, (4) contacting a psychosocial rehabilitation agency, (5) following the recommendation in her psychological evaluation, (6) completing an 18-week parenting course, (7) writing out a list of developmental tasks for each child, and (8) coming up with a budget. Doe v. Doe, 150 Idaho 36, 244 P.3d 180 (2010).

Father's parental rights were properly terminated on the ground of neglect because he had neither completed a case plan nor reunited with them within the time limits of subsection (9). This section contemplates reunification within 15 months and the children here had been in foster care for 18 months. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 151 Idaho 846, 264 P.3d 953 (2011) (see 2013 amendment).

Placement Decisions.

Summary judgment was properly awarded to the Idaho department of health and welfare on grandparents' petition to adopt a child because the grandparents could not adopt the child without written consent from the department regardless of what facts they presented; the department had stated that it would not consent to the adoption. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 150 Idaho 491, 248 P.3d 742 (2011).

Presumptions.

While subsection (9) creates a rebuttable presumption that the department of health and welfare should initiate proceedings to terminate parental rights under certain conditions, it does not create a presumption that termination of the mother's parental rights is in the child's best interest. Such a conclusion must be proved by by clear and convincing evidence. In re Doe, 148 Idaho 124, 219 P.3d 448 (2009) (see 2013 amendment).

The presumption in favor of the department initiating a termination petition set out in subsection (9) does not create a presumption that it is in the best interests of the child to terminate parental rights. A finding that it is in the best interests of the child to terminate parental rights must still be made upon objective grounds, supported by substantial and competent evidence. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 953, 277 P.3d 400 (Ct. App. 2012) (see 2013 amendment).

Termination Petition.

Father's parental rights were properly terminated where court found that father had neglected his child by failing to comply with the court's orders in a case plan, by failing to reunify with his son within fifteen of the last twenty-two months, and by failing to demonstrate consistency in housing, employment, and/or abstinence from controlled substances, impairing his ability to provide proper parental care. Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 401, 234 P.3d 725 (2010) (see 2013 amendment).

Cited in: Idaho Dep't of Health & Welfare v. Doe (In re Doe), 149 Idaho 564, 237 P.3d 661 (Ct. App. 2010); In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

RESEARCH REFERENCES

A.L.R. — Constitutional challenges to state child abuse registries. 36 A.L.R.6th 475.

16-1633. Guardian ad litem — Duties. — Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child and shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.

(2) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child's express wishes in the report

to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.

(3) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately advocate for the child's best interests, and shall be entitled to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case.

(4) To monitor the circumstances of a child and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.

(5) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.

(6) Such other and further duties as may be expressly imposed by the court order.

History.
I.C., § 16-1631, as added by 1989, ch. 281, § 5, p. 684; am. 1996, ch. 272, § 16, p. 884; am. and redesig. 2005, ch. 391, § 35, p. 1263; am. 2010, ch. 284, § 1, p. 765.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 284, rewrote the section to the extent that a detailed comparison is impracticable.

CHAPTER 20

TERMINATION OF PARENT AND CHILD RELATIONSHIP

SECTION.
16-2002. Definitions.
16-2005. Conditions under which termination may be granted.
16-2007. Notice — Waiver — Guardian ad litem.
16-2008. Investigation prior to disposition.
16-2014. Appeals.

16-2001. Purpose.

JUDICIAL DECISIONS

Cited in: Doe v. Doe (In re Doe), 148 Idaho 243, 220 P.3d 1062 (2009).

16-2002. Definitions. — When used in this chapter, unless the text otherwise requires:

(1) "Court" means the district court or magistrate's division thereof or, if the context requires, a judge or magistrate thereof.

(2) "Child" or "minor" means any individual who is under the age of eighteen (18) years.

(3) "Neglected" means:

(a) Conduct as defined in section 16-1602(26), Idaho Code; or

(b) The parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and:

(i) The department has had temporary or legal custody of the child for fifteen (15) of the most recent twenty-two (22) months; and

(ii) Reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the department.

(4) "Abused" means conduct as defined in section 16-1602(1), Idaho Code.

(5) "Abandoned" means the parent has willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact. Failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section; provided however, where termination is sought by a grandparent seeking to adopt the child, the willful failure of the parent to maintain a normal parental relationship as provided herein without just cause for six (6) months shall constitute prima facie evidence of abandonment.

(6) "Legal custody" means status created by court order which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child and to determine where and with whom the child shall live;

(b) To supply the child with food, clothing, shelter and incidental necessities;

(c) To provide the child with care, education and discipline; and

(d) To authorize medical, dental, psychiatric, psychological and other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children;

provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

(7) "Guardianship of the person" means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(a) The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized child placement agency;

(d) When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the

child and to make any other decision concerning the child which the child's parents could make.

(8) "Guardian ad litem" means a person appointed by the court pursuant to section 16-1614 or 5-306, Idaho Code.

(9) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(10) "Department" means the department of health and welfare and its authorized representatives.

(11) "Parent" means:

(a) The birth mother or the adoptive mother;

(b) The adoptive father;

(c) The biological father of a child conceived or born during the father's marriage to the birth mother; and

(d) The unmarried biological father whose consent to an adoption of the child is required pursuant to section 16-1504, Idaho Code.

(12) "Presumptive father" means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.

(13) "Parent and child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.

(14) "Parties" includes the child and the petitioners.

(15) "Unmarried biological father," as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child who was not married to the child's mother at the time the child was conceived or born.

(16) "Unmarried biological mother," as used in this chapter, means the biological mother of a child who was not married to the child's biological father at the time the child was conceived or born.

(17) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(18) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain, or improve the parenting abilities of a parent with a disability.

(19) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge

their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

History.

1963, ch. 145, § 2, p. 420; am. 1971, ch. 266, § 1, p. 1067; am. 1972, ch. 196, § 3, p. 483; am. 1988, ch. 138, § 1, p. 249; am. 1990, ch. 26, § 1, p. 40; am. 1996, ch. 365, § 1, p. 1222; am. 2000, ch. 171, § 8, p. 422; am. 2002, ch. 233, § 9, p. 666; am. 2005, ch. 391, § 47, p. 1263; am. 2013, ch. 287, § 11, p. 741.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 287, substituted "section 16-1602(26)" for "section 16-1602(25)" in paragraph (3)(a) and rewrote paragraph (3)(b), which formerly read: "The parent(s) has failed to comply with the court's orders in a child protective act case or the case plan, and reunification of the child with his or her parent(s) has not occurred within the time standards set forth in section 16-1629(9), Idaho Code."

JUDICIAL DECISIONS

Analysis

Abandonment.
Neglected.
Parent.

Abandonment.

Where the father was serving probation for felony injury to a child, the terms of his sexual abuse treatment program required that he not contact any minor children and his wife refused to consent to his contact with their children. In a termination of parental rights proceeding, substantial evidence supported the magistrate's finding that he did not willfully abandon his children within the meaning of subsection (5) of this section. Doe I v. Doe II (In re Doe), 148 Idaho 713, 228 P.3d 980 (2010).

Finding of abandonment was proper, although there was an enforceable no contact with mother order, where it was undisputed that father had no contact whatsoever with his daughter and he provided no financial support for her. Doe v. Doe, 149 Idaho 392, 234 P.3d 716 (2010).

Trial court erred in terminating a father's parental rights to his child on the ground of abandonment, because the court did not adequately consider how the father's position in the military might have severely limited his ability to maintain a normal relationship with his child and the court did not give adequate consideration to the fact that the father had stayed current on his child support payments. Doe v. Doe (In re Doe), 150 Idaho 46, 244 P.3d 190 (2010).

Sufficient evidence supported an order terminating a father's parental rights on the ground of abandonment where he failed to maintain regular contact with the children and the children had bonded with their stepfather; the magistrate was justified in finding that the father's attempt to blame his financial difficulties was unpersuasive. Doe v. Doe, 152 Idaho 77, 266 P.3d 1182 (Ct. App. 2011).

Decision terminating the parental rights of a Mexican citizen to his daughter born in the United States on the ground of abandonment was not supported by substantial evidence, where there was no evidence that he had the ability to establish any relationship with his daughter as long as she was in the custody of the department and he was in Mexico, legally barred from entering the United States. Additionally, there is no evidence that he had the ability to pay support, and he consistently expressed the desire to have custody of daughter, doing all that he could do for that to happen. In re Doe, — Idaho —, 281 P.3d 95 (2012).

Neglected.

Parents' failure to comply with the magistrate court's orders to complete their case plan, for the proper care and supervision of their children, meets the definition of "neglected" in this section. In re Termination of Doe v. Doe (In re Termination of Doe), 147 Idaho 353, 209 P.3d 650 (2009).

Order terminating a mother's parental rights to her five children under § 16-2005(1)(b) was proper because she had neglected her children within the meaning of subdivision (3)(b) of this section by her failure

to comply with her case plan, her failure to maintain safe, stable and adequate housing, and her ongoing relationship with a convicted sex offender. State v. Doe, 149 Idaho 409, 234 P.3d 733 (2010).

Neglect may be properly found under subdivision (3)(b) where the mother was not reunified with her children for fifteen out of twenty-one months, while the state had spent over $80,000 on counseling, gas vouchers, rental assistance, and foster care and mother failed to maintain residential and financial stability. State v. Doe, 149 Idaho 409, 234 P.3d 733 (2010).

Under §§ 16-1602 and 16-1629 and this section, termination of parental rights was in the best interests of the children, based on the parents' history, and ongoing use, of controlled substances, which resulted in neglect of the children who were in foster care for seventeen out of twenty-two months. Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 474, 235 P.3d 1195 (2010).

Evidence supported the magistrate's decision that termination was proper because the mother and father neglected the children by failing to comply with their case plan and by failing to provide proper care and control, given that: (1) the children had been seen unsupervised, (2) the mother and father had inconsistent compliance with their case plan, (3) they did not provide child support or maintain regular phone contact with the children, (4) all the witnesses were in agreement as to the inadequate and unstable living conditions and lack of improvement by the mother and father, and (5) the mother and father were unwilling or unable to provide the care and stability the children needed. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 149 Idaho 564, 237 P.3d 661 (Ct. App. 2010).

Finding of neglect was supported when the mother failed to perform many requirements of the care plan, including undergoing a psychological evaluation, providing verification of financial stability, maintaining a safe and stable home, developing a custody agreement with the father, and applying any learned parenting skills to caring for the child. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 149 Idaho 627, 238 P.3d 724 (Ct. App. 2010).

Termination of the mother's parental rights to her children was proper because the magistrate court specifically found neglect on the grounds that the mother and her husband had failed to comply with their case plan by not: (1) providing Idaho department of health and welfare with a schedule of household chores, (2) completing a food safety course, (3) cooperating with visits from the department, (4) contacting a psychosocial rehabilitation agency, (5) following the recommendation in her psychological evaluation, (6) completing an 18-week parenting course, (7) writing out a list of developmental tasks for each child, and (8) coming up with a budget. Doe v. Doe, 150 Idaho 36, 244 P.3d 180 (2010).

The magistrate court placed excessive emphasis upon father's admittedly abhorrent behavior prior to the removal of the children from his home, and upon minor noncompliance with reporting requirements that had not been in effect for half a year prior to the termination hearing, while disregarding or giving minimal attention to the compelling evidence of father's success in overcoming alcoholism, complying with treatment requirements, maintaining remunerative employment, and becoming a nurturing parent with whom the children had developed a strong bond. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 752, 250 P.3d 803 (Ct. App. 2011).

Trial court did not err in terminating a father's parental rights because there was substantial evidence that he neglected his children. After his release from prison, he failed to establish suitable living arrangements, failed to obtain adequate employment, and was convicted of driving without privileges. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

In terminating a father's parental rights, evidence of his failure to comply with his case plan was properly considered as a basis for neglect. Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011).

Termination of both parents' rights was proper where the father was incarcerated, and where neither parent had reunited with the children or completed requirements of their case plans. Further, the children had lived in foster care for 18 months preceding trial. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 151 Idaho 846, 264 P.3d 953 (2011).

Trial court did not err in terminating a father's parental rights under subsection (3), because he neglected his child by conduct or omission, which caused the child to be without proper parental care and control, subsistence, medical, or other care or control. The father had not expressed a genuine interest in learning about the child's special needs, let alone how to care for those needs on a daily basis. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 644, 273 P.3d 685 (2012).

In a termination of parental rights case, substantial evidence supported the finding that appellant mother neglected her children by failing to comply with her case plan: appellant failed to maintain safe housing and employment, did not demonstrate adequate parenting skills, and resisted suggestions for

improvement. In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

Parent.

Biological father was not a "parent" under this section and had no parental rights to the child; substantial and competent evidence supported the magistrate court's findings that the father failed to meet the requirements of § 16-1504(2)(a), as he had not developed a substantial relationship with the child and never took any of the steps available to establish himself as the child's parent. Dep't of Health & Welfare, v. Doe (In the Interest of Doe), 150 Idaho 88, 244 P.3d 232 (2010).

Man, who is neither child's adoptive nor biological father, cannot assert his status as child's parent only on the basis of a child support order obtained by the department which stated hat he "is the legal father" of child. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 140, 244 P.3d 1226 (2010).

Where substantial and competent evidence supported the magistrate's determination that the presumed father was never married to the mother and was not the child's adoptive or biological father, the magistrate did not err when he determined that the presumed father did not meet the statutory definition of a "parent" or "presumptive father." Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 195, 245 P.3d 506 (Ct. App. 2010).

Cited in: In re Doe, 148 Idaho 124, 219 P.3d 448 (2009); Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 401, 234 P.3d 725 (2010); Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 953, 277 P.3d 400 (Ct. App. 2012).

16-2003. Jurisdiction.

JUDICIAL DECISIONS

Cited in: Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

16-2004. Petition — Who may file.

JUDICIAL DECISIONS

Authorized Agency.

As an "authorized agency" under this section, the Idaho department of health and welfare may petition for the termination of a mother's parental rights in her child. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

Cited in: Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 195, 245 P.3d 506 (Ct. App. 2010).

16-2005. Conditions under which termination may be granted. — (1) The court may grant an order terminating the relationship where it finds that termination of parental rights is in the best interests of the child and that one (1) or more of the following conditions exist:

(a) The parent has abandoned the child.

(b) The parent has neglected or abused the child.

(c) The presumptive parent is not the biological parent of the child.

(d) The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

(e) The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.

(2) The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:

(a) The parent caused the child to be conceived as a result of rape, incest,

lewd conduct with a minor child under the age of sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

(b) The following circumstances are present:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate continuing the relationship would result in unacceptable risk to the health and welfare of the child;

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code;

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(iv) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The court determines the child to be an abandoned infant, except in a parental termination action brought by one (1) parent against another parent.

(3) The court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.

(4) The court may grant an order terminating the relationship where a consent to termination in the manner and form prescribed by this chapter has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this chapter must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ....

In the Matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the .... of ...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said ...., who was born ...., ..., unto ...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition

to terminate my (our) parental relationship with the said ...., and respectfully request the petition be granted.

DATED: ...., 20 ..

.....

STATE OF IDAHO)
) ss.
COUNTY OF ....)

On this .... day of ...., 20 ...., before me, the undersigned ...., ... (Judge or Magistrate) of the District Court of the .... Judicial District of the state of Idaho, in and for the county of ...., personally appeared ...., known to me (or proved to me on the oath of ....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(1) It is witnessed by a magistrate or district judge of the state where signed; or

(2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

(5) Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

(6) If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or additional obligation on

state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

History.

1963, ch. 145, § 5, p. 420; am. 1971, ch. 266, § 2, p. 1067; am. 1987, ch. 207, § 1, p. 436; am. 1990, ch. 25, § 1, p. 38; am. 1994, ch. 393, § 4, p. 1243; am. 1994, ch. 426, § 2, p. 1334; am. 1996, ch. 365, § 2, p. 1222; am. 1998, ch. 310, § 1, p. 1028; am. 1999, ch. 314, § 1, p. 779; am. 2000, ch. 77, § 1, p. 161; am. 2000, ch. 171, § 9, p. 422; am. 2002, ch. 233, § 10, p. 666; am. 2003, ch. 260, § 1, p. 683; am. 2005, ch. 391, § 49, p. 1263; am. 2013, ch. 287, § 12, p. 741.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 287, rewrote paragraph (2)(b) which formerly read: "The parent has subjected the child to torture, chronic abuse or sexual abuse, has committed murder or intentionally killed the other parent of the child, has committed murder or voluntary manslaughter of another child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter, and/or has committed battery which resulted in serious bodily injury to a child; or."

JUDICIAL DECISIONS

Analysis

Abandonment.
Abuse of child.
Appellate review.
Best interests of child.
Burden of proof.
Disability.
Incarceration.
Neglect.
Party.
Rehabilitation of parents.
Standard of proof.
Termination improper.
Termination proper.

Abandonment.

Where the father was serving probation for felony injury to a child, the terms of his sexual abuse treatment program required that he not contact any minor children and his wife refused to consent to his contact with their children. In a termination of parental rights proceeding, substantial evidence supported the magistrate's finding that he did not willfully abandon his children within the meaning of subsection (1)(a) of this section. Doe I v. Doe II (In re Doe), 148 Idaho 713, 228 P.3d 980 (2010).

Trial court erred in terminating a father's parental rights to his child on the ground of abandonment under this section, because the court did not adequately consider how the father's position in the military might have severely limited his ability to maintain a normal relationship with his child and the court did not give adequate consideration to the fact that the father had stayed current on his child support payments. Doe v. Doe (In re Doe), 150 Idaho 46, 244 P.3d 190 (2010).

Sufficient evidence supported an order terminating a father's parental rights on the ground of abandonment where he failed to maintain regular contact with the children and the children had bonded with their stepfather; the magistrate was justified in finding that the father's attempt to blame his financial difficulties was unpersuasive. Doe v. Doe, 152 Idaho 77, 266 P.3d 1182 (Ct. App. 2011).

Decision terminating the parental rights of a Mexican citizen to his daughter born in the United States on the ground of abandonment was not supported by substantial evidence, where there was no evidence that he had the ability to establish any relationship with his daughter as long as she was in the custody of the department and he was in Mexico, legally barred from entering the United States. Additionally, there is no evidence that he had the ability to pay support, and he consistently expressed the desire to have custody of daughter, doing all that he could do for that to happen. In re Doe, — Idaho —, 281 P.3d 95 (2012).

Abuse of Child.

Magistrate erred in finding that, in not specifically using the word "abuse," the state did not allege abuse as a ground for termination under subdivision (1)(b), when the language used by the state in describing the second ground for termination was almost identical to the definition of abused under § 16-1602(1)(a). Idaho Dep't of Health & Wealth v. Doe (In re Doe), 149 Idaho 653, 239 P.3d 451 (Ct. App. 2010).

Appellate Review.

Grounds for termination of parental rights must be shown by clear and convincing evidence, because each parent has a fundamental liberty interest in maintaining a relationship with his or her child. Clear and convincing evidence is generally understood to be evidence indicating that the thing to be proved is highly probable or reasonably certain. On appeal, an appellate court will not disturb the magistrate court's decision to terminate parental rights, if there is substantial, competent evidence in the record to support the decision. Substantial, competent evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. An appellate court is required to conduct an independent review of the magistrate court record, but must draw all reasonable inferences in favor of the magistrate court's judgment because the magistrate court has the opportunity to observe witnesses' demeanor, to assess their credibility, to detect prejudice or motive, and to judge the character of the parties. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 263, 270 P.3d 1048 (2012).

Where, in her opening brief, mother did not contest that substantial and competent evidence existed to support the district court's holding that mother neglected child and was unable to discharge her parental responsibilities, she will have been deemed to have waived that issue. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 263, 270 P.3d 1048 (2012).

Best Interests of Child.

Termination of mother's parental rights was in a child's best interest under subsection (1), because the child was 22 months old and had been in foster care since seven weeks of age and mother had not demonstrated that she would not resume using methamphetamine. In re Doe 2009-19, 150 Idaho 201, 245 P.3d 953 (2010).

Substantial evidence supported the magistrate's finding that termination of a father's parental rights would be in the children's best interest given that: (1) the father had a long criminal history, including gang membership, (2) he was currently incarcerated for aggravated assault, (3) he continued to incur new charges after the children were born, (4) he did not provide the children with daily support and it was likely to be a long time before he was prepared to be a parent to them, and (5) he could not provide the children with stability and permanency. Idaho Dep't of Health & Welfare v. Doe, 152 Idaho 797, 275 P.3d 23 (Ct. App. 2012).

The fact that a child may enjoy a higher standard of living in the United States than in a foreign country where the child's parent resided was not a reason to terminate the parental rights of a foreign national; rather, the natural parent presumption applied. In re Doe, — Idaho —, 281 P.3d 95 (2012).

Burden of Proof.

In a termination of parental rights action, the petitioner holds and retains the burden of persuasion to show that abandonment has occurred. This includes a showing that the defendant parent is without just cause for not maintaining a normal relationship with the child. If the petitioning party makes the prima facie case, then the defendant parent holds the burden of production to present evidence of just cause. If the trier of fact finds that there are no valid defenses or "just causes," then the petitioning party has met the burden of persuasion. Doe v. Doe, 149 Idaho 392, 234 P.3d 716 (2010).

Disability.

Subsection (6) does not require the Idaho department of health and welfare and/or its caseworkers to notify a mother that she is disabled due to her bipolar and anxiety disorders Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 498, 260 P.3d 1169 (2011).

Incarceration.

Order terminating an incarcerated father's parental rights was proper as he had been convicted of voluntary manslaughter, was likely to remain incarcerated during the remainder of his children's minority, and the children had no independent recollection of the father. Doe v. Doe (In re Doe), 148 Idaho 243, 220 P.3d 1062 (2009).

Father's incarceration provided a basis for termination of his parental rights under paragraph (1)(e) because the father had been, and was likely to remain, incarcerated for a substantial (important or meaningful) period of the child's minority. Given his history of drug abuse, prior criminal record and past failure to successfully complete the requirements of probation, it was likely that considerable time would pass before he was able to regain custody of the child; and the child was in her formative years. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 605, 261 P.3d 882 (Ct. App. 2011).

Neglect.

Order terminating a mother's parental rights to her five children under subdivision (1)(b) was proper because she had neglected her children within the meaning of § 16-2002(3)(b) by her failure to comply with her case plan, her failure to maintain safe, stable and adequate housing, and her ongoing relationship with a convicted sex offender. State v. Doe, 149 Idaho 409, 234 P.3d 733 (2010).

Evidence supported the magistrate's decision that termination was proper because the mother and father neglected the children by failing to comply with their case plan and by failing to provide proper care and control, given that: (1) the children had been seen unsupervised, (2) the mother and father had inconsistent compliance with their case plan, (3) they did not provide child support or maintain regular phone contact with the children, (4) all the witnesses were in agreement as to the inadequate and unstable living conditions and lack of improvement by the mother and father, and (5) the mother and father were unwilling or unable to provide the care and stability the children needed. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 149 Idaho 564, 237 P.3d 661 (Ct. App. 2010).

Termination of the mother's parental rights to her children was proper because the magistrate court specifically found neglect on the grounds that the mother and her husband had failed to comply with their case plan by not: (1) providing Idaho department of health and welfare with a schedule of household chores, (2) completing a food safety course, (3) cooperating with visits from the department, (4) contacting a psychosocial rehabilitation agency, (5) following the recommendation in her psychological evaluation, (6) completing an 18-week parenting course, (7) writing out a list of developmental tasks for each child, and (8) coming up with a budget. Doe v. Doe, 150 Idaho 36, 244 P.3d 180 (2010).

Trial court did not err in terminating a father's parental rights under paragraph (1)(b), because he neglected his child by conduct or omission, which caused the child to be without proper parental care and control, subsistence, medical, or other care or control. The father had not expressed a genuine interest in learning about the child's special needs, let alone how to care for those needs on a daily basis. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 644, 273 P.3d 685 (2012).

In a termination of parental rights case, substantial evidence supported the finding that appellant mother neglected her children by failing to comply with her case plan that had been prepared to set forth reasonable efforts that would make it possible for the children to return to appellant's home. Appellant failed to maintain safe housing and employment as required by the case plan, did not demonstrate adequate parenting skills, and resisted her caseworkers' suggestions for improvement. In re Doe, 152 Idaho 910, 277 P.3d 357 (2012).

Termination of the mother's parental rights on grounds of neglect under paragraph (1)(b) was proper because the mother failed to comply with the case plan in areas of substance abuse and mental health and the mother never provided verification of full-time employment or adequate housing. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 152 Idaho 953, 277 P.3d 400 (Ct. App. 2012).

Party.

Idaho does not recognize equitable adoption; thus, a "father" claiming equitable parental rights is not a proper party to termination proceedings. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 195, 245 P.3d 506 (Ct. App. 2010).

Rehabilitation of Parents.

Although it was uncontroverted that the mother loved the child, that was not enough to permit continued custody where a caseworker testified that she did not feel the mother was capable of safely and effectively parenting the child, that the mother had not established a connection with the child and that no purpose would be served with additional time or services. The goals of permanency and the needs of the child were not met by preserving the mother's parental rights with the hope she could someday be capable of caring for the child. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 149 Idaho 627, 238 P.3d 724 (Ct. App. 2010).

Standard of Proof.

Under subsection (1)(d) of this section, the district court's finding that father was unable to discharge parental responsibilities was supported by substantial and competent evidence where the magistrate relied heavily on statements from three DHW workers. Dep't of Health & Welfare v. Doe, 149 Idaho 207, 233 P.3d 138 (2010).

Termination Improper.

The magistrate court placed excessive emphasis upon father's admittedly abhorrent behavior prior to the removal of the children from his home, and upon minor noncompliance with reporting requirements that had not been in effect for half a year prior to the termination hearing, while disregarding or giving minimal attention to the compelling evidence of father's success in overcoming alcoholism, complying with treatment requirements, maintaining remunerative employment, and becoming a nurturing parent with whom the children had developed a strong bond. The evidentiary record does not

provide objectively supportable grounds for the trial court's decision that termination of father's parental rights was in the best interests of the children. Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 752, 250 P.3d 803 (Ct. App. 2011).

Termination Proper.

District court did not err in concluding that there was sufficient evidence to support a magistrate's decision to terminate a mother's parental rights in her child. Although the mother's case plan required her to complete substance abuse counseling, the mother did not enter counseling until over three years later, after the termination trial had begun. In re Doe, 148 Idaho 124, 219 P.3d 448 (2009).

Under subsection (1)(d) of this section, the district court did not err in terminating the mother's parental rights, as it was supported by substantial, competent evidence; the fact that the mother demonstrated that she had improved in her ability to pay attention to her children did not undermine the lower court's finding that the mother was unable to carry out her parental responsibilities and this inability would be injurious to the health, morals, and well-being of the children. Idaho Dep. of Health and Welfare v. Doe (In re Child I), 149 Idaho 165, 233 P.3d 96 (2010).

Father's parental rights were properly terminated where court found that father had neglected his child by failing to comply with the court's orders in a case plan, by failing to reunify with his son within fifteen of the last twenty-two months, and by failing to demonstrate consistency in housing, employment, and/or abstinence from controlled substances, impairing his ability to provide proper parental care. Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 401, 234 P.3d 725 (2010).

Termination of the mother's parental rights was proper because she could not independently parent the child in the future based on the degenerative and incurable nature of her multiple sclerosis, her physical and mental impairments could be injurious to the child, and termination was in child's best interests. Idaho Dep't of Health & Welfare v. Doe (In re Doe), — Idaho —, 291 P.3d 39 (2012).

Cited in: Idaho Dep't of Health & Welfare v. Doe (In the Interest of Doe), 149 Idaho 474, 235 P.3d 1195 (2010); Idaho Dep't of Health & Welfare v. Doe (In re Doe), 150 Idaho 140, 244 P.3d 1226 (2010); Ida. Dep't of Health & Welfare v. Doe (In re Doe), 151 Idaho 356, 256 P.3d 764 (2011); Doe v. Idaho Dep't of Health & Welfare (In re Doe), 151 Idaho 846, 264 P.3d 953 (2011).

RESEARCH REFERENCES

A.L.R. — Parents' mental illness or mental deficiency as ground for termination of parental rights — Issues concerning rehabilitative and reunification services. 12 A.L.R.6th 417.

16-2007. Notice — Waiver — Guardian ad litem. — (1) After a petition has been filed, the court shall set the time and place for hearing. The petitioner shall give notice to any person entitled to notice under section 16-1505, Idaho Code, the authorized agency having legal custody of the child and the guardian ad litem of the child and of a parent. The petitioner shall give notice to the Idaho department of health and welfare if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho.

(2) Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful or are impossible because the whereabouts of parties entitled to notice are not known or reasonably ascertainable, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication.

(3) Notice and appearance may be waived by a parent in writing and

witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person waiving notice and appearance resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ....

In the Matter of the termination)
of the parental rights to)
.....)
.....)
(a) minor child(ren)

I (we), the undersigned, being the .... of ...., do hereby waive my (our) right to notice and my (our) right to appear in any action seeking termination of my (our) parental rights. I (we) understand that by waiving notice and appearance my (our) parental right(s), to the said ...., who was born ...., ..., unto ...., may be completely and forever terminated, including all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ...., and I (we) do hereby expressly waive my (our) right(s) to notice of or appearance in any such action.

DATED: ...., 20 ....

.....

STATE OF IDAHO)
) ss.
COUNTY OF ....)

On this .... day of ....., 20...., before me, the undersigned ....., ... (Judge or Magistrate) of the District Court of the ..... Judicial District of the state of Idaho, in and for the county of ....., personally appeared ....., known to me (or proved to me on the oath of .....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

(4) The court shall accept a waiver of notice and appearance executed in another state if:

(a) It is witnessed by a magistrate or district judge of the state where signed; or

(b) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the waiver of notice and appearance was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the waiver of notice and appearance was executed in accordance with the laws of the state in which it was executed.

(5) When the termination of the parent and child relationship is sought and the parent is determined to be incompetent to participate in the proceeding, the court shall appoint a guardian ad litem for the alleged

incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Except as provided in section 16-1504(5), Idaho Code, where a putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

(6) If a parent fails to file a claim of parental rights pursuant to the provisions of chapter 82, title 39, Idaho Code, for a child left with a safe haven pursuant thereto, prior to entry of an order terminating their parental rights, that parent is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights.

History.

1963, ch. 145, § 7, p. 420; am. 1987, ch. 207, § 2, p. 436; am. 1990, ch. 58, § 1, p. 134; am. 2000, ch. 171, § 10, p. 422; am. 2001, ch. 357, § 6, p. 1252; am. 2002, ch. 233, § 11, p. 666; am. 2005, ch. 25, § 80, p. 82; am. 2005, ch. 391, § 50, p. 1263; am. 2013, ch. 138, § 6, p. 323.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 138, rewrote the last sentence of subsection (5), which formerly read: "Where the putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child born out of wedlock, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code."

JUDICIAL DECISIONS

Analysis

Guardian ad litem.
—Necessity.

Guardian Ad Litem.

—Necessity.

A guardian ad litem is not required in every termination of parental rights proceeding. Doe v. Doe, 149 Idaho 392, 234 P.3d 716 (2010).

16-2008. Investigation prior to disposition. — (1) If a petition for adoption is not filed in conjunction with a petition for termination, or the petition for termination was not filed by a children's adoption agency licensed by the state of Idaho upon the filing of a petition for termination, the court shall direct the department of health and welfare, bureau of child support services to submit a written financial analysis report within thirty (30) days from date of notification, detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child. The financial analysis shall include recommendations regarding

repayment of unreimbursed public assistance and provisions for future support for the child and the reasons therefor.

(2) Upon the filing of a petition, the court may direct, in all cases where written consent to termination has not been given as provided in this chapter, that an investigation be made by the department of health and welfare, division of family and community services, or a licensed children's adoption agency, and that a report in writing of such study be submitted to the court prior to the hearing, except that where the department of health and welfare or a licensed children's adoption agency is a petitioner, either in its own right or on behalf of a parent, a report in writing of the investigation made by such agency shall accompany the petition. The department of health and welfare or the licensed children's adoption agency shall have thirty (30) days from notification by the court during which it shall complete and submit its investigation unless an extension of time is granted by the court upon application by the agency. The court may order additional investigation as it deems necessary. The social study shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated. If the parent has a disability as defined in this chapter, the parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the parent of such right and shall consider all such information in any findings or recommendations. The social study shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. Where the parent is a minor, if the report does not include a statement of contact with the parents of said minor, the reasons therefor shall be set forth. The purpose of the investigation is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

(3) Except as provided in section 16-1504(5), Idaho Code, no social study or investigation as provided for in subsection (2) of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or who has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, unless such putative father is one (1) of those persons specifically set forth in section 16-1505(1), Idaho Code.

History.

1963, ch. 145, § 8, p. 420; am. 1985, ch. 55, § 1, p. 108; am. 1987, ch. 207, § 3, p. 436; am. 1992, ch. 341, § 3, p. 1031; am. 2000, ch. 171, § 11, p. 422; am. 2002, ch. 233, § 12, p. 666; am. 2013, ch. 138, § 7, p. 323.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 138, redesignated the former alphabetical subsection designations numerically and made internal reference updates; substituted "bureau of child support services" for "bureau of child support enforcement" in subsection (1); in the first sentence of subsection (2), substituted "this chapter" for "this act" and "division of family and community services" for "division of family and children's services"; and rewrote subsection (3), which formerly read: "No social study or investigation as provided for in subsection b. of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child, unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code."

16-2009. Hearing.

JUDICIAL DECISIONS

Analysis

Clear and convincing.
Parent's right to counsel.

Clear and Convincing.

Where the father was serving probation for felony injury to a child, the terms of his sexual abuse treatment program required that he not contact any minor children and his wife refused to consent to his contact with their children. In a termination of parental rights proceeding, substantial evidence supported the magistrate's finding that there was not clear and convincing evidence to show that the father willfully abandoned his children for purposes of this section. Doe I v. Doe II (In re Doe), 148 Idaho 713, 228 P.3d 980 (2010).

Parent's Right to Counsel.

Where there was no showing of any conflict of interest and no showing of any prejudice to either the mother or the father resulting from their joint representation, the fact that separate counsel was not appointed for each did not constitute reversible error. Doe v. Idaho Dep't of Health & Welfare (In re Doe), 150 Idaho 563, 249 P.3d 362 (2011).

Cited in: In re Termination of Doe v. Doe (In re Termination of Doe), 147 Idaho 353, 209 P.3d 650 (2009).

16-2014. Appeals. — Any appeal from an order or decree of the court granting or refusing to grant a termination shall be taken to the supreme court, provided however, pendency of an appeal or application therefor shall not suspend the order of the court relative to termination of the parent-child relationship.

History.

1963, ch. 145, § 14, p. 420; am. 1971, ch. 170, § 4, p. 805; am. 2010, ch. 26, § 3, p. 46.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 26, substituted "Any appeal from" for "An appeal may be taken to the district court from" at the beginning, and "shall be taken to the supreme court, provided however" for "in the manner and form as appeals are taken in other civil proceedings from the magistrates division of the district court to district courts, provided, however" near the middle.

CHAPTER 24

CHILDREN'S MENTAL HEALTH SERVICES

SECTION.

16-2411. Emergency mental health response and evaluation — Temporary detention by a peace officer or health care professional.

16-2411. Emergency mental health response and evaluation — Temporary detention by a peace officer or health care professional. — (1) A peace officer may take a child into protective custody and immediately transport the child to a treatment facility for emergency mental health evaluation in the absence of a court order if and only if the officer determines that an emergency situation exists as defined in this chapter, and the officer has probable cause to believe, based on personal observation and investigation, representation of the child's parents or the recommendation of a mental health professional, that the child is suffering from serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(2) For purposes of this section, "health care professional" means a physician, physician's assistant or advanced practice registered nurse, any one (1) of whom then is practicing in a hospital. A health care professional may detain a child if such person determines that an emergency situation exists as defined in this chapter, and such person has probable cause to believe that the child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others. If the hospital does not have an appropriate facility to provide emergency mental health care, it may cause the child to be transported to an appropriate treatment facility. The health care professional shall notify the parent or legal guardian, if known, as soon as possible and shall document in the patient's chart the efforts to contact the parent or legal guardian. If the parent or legal guardian cannot be located or contacted, the health care professional shall cause a report to be filed as soon as possible and in no case later than twenty-four (24) hours with the Idaho department of health and welfare or an appropriate law enforcement agency. The child may not be detained against the parent or legal guardian's explicit direction unless the child is taken into protective custody pursuant to subsection (1) of this section, except that the child may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination under subsection (1) of this section.

(3) If a child has been taken into protective custody by a peace officer under the provisions of this section, the officer shall immediately transport the child to a treatment facility or mental health program, such as a regional mental health center, a mobile crisis intervention program, or a

therapeutic foster care facility, provided such center's program or facility has been approved by the regional office of the department for that purpose. The department shall make a list of approved facilities available to law enforcement agencies.

(4) Upon taking the child into protective custody or detaining the child pursuant to this section, the officer or health care professional shall take reasonable precautions to safeguard and preserve the personal property of the child unless a parent or guardian or responsible relative is able to do so. Upon presenting a child to a treatment facility, the officer shall inform the staff in writing of the facts that caused him to detain the child and shall specifically state whether the child is otherwise subject to being held for juvenile or criminal offenses.

(5) If the child who is being detained by a peace officer is not released to the child's parent, guardian or custodian, the law enforcement agency shall contact the child's parent, guardian or custodian as soon as possible, and in no case later than twenty-four (24) hours, and shall notify the child's parent, guardian or custodian of his status, location and the reasons for the detention of the child. If the parents cannot be located or contacted, efforts to comply with this section and the reasons for failure to make contact shall be documented in the child's record.

History.

I.C., § 16-2411, as added by 1997, ch. 404, § 1, p. 1281; am. 2013, ch. 293, § 1, p. 770.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 293, added "or health care professional" in the section heading; added subsection (2), redesignating the subsequent subsections; in subsection (4), inserted "or detaining the child pursuant to this section" and "or health care professional" in the first sentence and substituted "child" for "person" three times; and inserted "by a peace officer" near the beginning of subsection (5).